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Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

KEVIN STANFORD,

Petitioner,

v.

KENTUCKY,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of Kentucky

**BRIEF OF THE OFFICE OF THE
CAPITAL COLLATERAL REPRESENTATIVE
FOR THE STATE OF FLORIDA,
AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

Amicus has obtained the consent of the parties to file this brief.

The Office of the Capital Collateral Representative (CCR) was created by the Florida legislature, effective July 1, 1985, in response to the compelling need for effective assistance of counsel in postconviction proceedings for indigent prisoners sentenced to death. This new state agency is charged with representing indigent prisoners sentenced to death who are unable to secure counsel in collateral challenges in both the state and federal courts after direct appellate proceedings are concluded and the conviction and sentence have been affirmed. See Fla. Stat. Ann. § 27.702 (1987) (CCR enabling statute).

As the state agency expressly responsible—under a limited budget—for representing all indigent Florida prisoners under sentence of death, CCR has a critical interest in the establishment of age 18 as the minimum age for susceptibility to the death penalty. Presently, five Florida death row inmates were under age 18 at the time of their offenses; all are, or will become if their sentences are affirmed by the Florida Supreme Court on direct appeal, clients of CCR. The Florida Supreme Court has upheld the constitutionality of the death penalty for minors. *LeCroy v. State*, ____ So.2d ___, No. 69,484 (Fla. Oct. 20, 1988).

SUMMARY OF ARGUMENT

Amicus begins with the assumption—accepted by the plurality, concurrence, and dissent in *Thompson v. Oklahoma*—that there is “some age below which a juvenile’s crimes can never constitutionally be punished by death.” *Thompson v. Oklahoma*, 108 S.Ct. 2687, 2706 (1988) (concurring opinion); *id.* at 2700 (plurality opinion); *id.* at 2718 (dissenting opinion). This case presents the question invited by such an assumption: At what age does this culture set the line? The answer is age 18. Throughout the American legal system, age 18 is the recognized dividing line between adult responsibilities and childhood. That is the only principled line here as well.

In most states and for most purposes, minority status—defined as lower than age 18—confers a host of legal disabilities. Minors are treated differently because minors *are* different. The diverse legal disabilities imposed upon minors are bottomed on the common sense and empirically supported notion that minors lack maturity, judgment, impulse control and experience.

Exemption of minors from capital punishment will not detract from the penological justifications for the death penalty. Jury behavior demonstrates that execution of minors would not materially advance the interest in retribution. Juries, the representatives of the community whose outrage is being expressed by death sentences, seldom vote to condemn minors.

Further, exclusion of minors from the death penalty would not abate the deterrent force of the penalty for other minors. Adolescents are less likely to make the kind of cost-benefit analysis that attaches weight to the possibility of execution. Exemption of minors from execution also would not dilute deterrence for adults, because adults would most likely not identify with condemned minors. And juvenile executions are so rare that preclusion of such executions would have little impact on the deterrence of the population at large.

ARGUMENT

THE EXECUTION OF A MINOR WHO WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF THE OFFENSE WOULD VIOLATE EVOLVING STANDARDS OF DECENCY

The Court made clear in *Thompson* that *some* minimum age of susceptibility to the punishment of death must be recognized by a constitutional guarantee that brings to bear evolving standards of decency in fixing the outer boundaries of that criminal sanction. *Thompson*, 108 S. Ct. at 2700 (plurality); *id.* at 2706 (concurrence); *id.* at 2718 (dissent). The problem, of course, here as elsewhere in the evolution of constitutional law, resides in drawing the line. Shall it be 10, 12, 15, 18, 20, 21?

The inevitability of the difficult task of linedrawing is endemic to a Constitution that has chosen not to leave it to the vagaries of isolated juries and trial judges to determine exclusively and irremediably the state of our national conscience. If a constitutional line exists here—and *Thompson* shows that it does—the appropriate place to draw it is at least far clearer in relation to the present subject than in many constitutional areas. The overwhelming concentration of the relevant indicators fix age 18 as the line of full adult responsibility with a clarity that is not merely convenient but compelling when the gravest penal sanction of a society is sought to be exacted of its youth.

The cruel and unusual punishments clause of the eighth amendment, made binding upon the states through the fourteenth amendment, prohibits punishments that violate “the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Those standards of decency are revealed by objective indicia such as legislative enactments and actual jury verdicts. *Thompson*, 108 S. Ct. at 2691 (plurality); *id.* at 2708 (concurrence); *Enmund v. Florida*, 458 U.S. 782 (1982); *Coker v. Georgia*, 433 U.S. 584, 592 (1977). Linedrawing here should be “informed by objective factors to the maximum possible extent.” *Coker*, 433 U.S. at 592.

A. In Most States And For Most Purposes, Age Eighteen Marks The Boundary Between Childhood And Adult Responsibilities

Throughout the American legal system, age 18 is recognized as the dividing line between adult responsibility and childhood. This line is reflected in the enactments of legislatures, the actual behavior of capital juries, the opinions of respected professional organizations, and the norms of international conduct.

1. Legislative Enactments

The “law has generally regarded minors as having a lesser capability for making important decisions,” *Carey v. Popula-*

tion Services International, 431 U.S. 678, 693 n.15 (1977), and “recognizes a host of distinctions between the rights and duties of children and those of adults.” *New Jersey v. T.L.O.*, 469 U.S. 325, 350 n.2 (1985) (Powell, J., concurring). Because of these distinctions, the Court has “sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.” *New York v. Ferber*, 458 U.S. 747, 757 (1982). The “State’s interest in the welfare of its young citizens justifies a variety of protective measures. Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent.” *H. L. v. Matheson*, 450 U.S. 398, 421-22 (1981) (Stevens, J., concurring) (quoting *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 102 (1976) (Stevens, J., dissenting)). The “experience of mankind, as well as the long history of our law, recogniz[es] that there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults. Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office.” *Goss v. Lopez*, 419 U.S. 565, 590-91 (1975) (Powell, J., dissenting) (emphasis in original). As the plurality observed in *Thompson*, “[i]t would be ironic if these assumptions that we so readily make about children as a class—about their inherent difference from adults in their capacity as agents, as choosers, as shapers of their own lives—were suddenly unavailable in determining whether it is cruel and unusual to treat children the same as adults for purposes of inflicting capital punishment.” 108 S. Ct. at 2693 n.23 (plurality).

Minority status—meaning younger than age 18—universally confers a host of statutory disabilities. Eighteen years is the line selected by Congress and the states in their enactment and ratification of the twenty-sixth amendment to the Constitution governing voting age. Following extensive hearings, both state

and federal legislatures agreed to give constitutional significance to age 18 as the time when young people should first be permitted to participate in the most basic civic responsibility of adults in a democracy. See *Lowering the Voting Age to 18: Hearings Before the Subcomm. on Constitutional Amendments of the Senate Committee on the Judiciary*, 91st Cong., 2d Sess. (1970); Sen. Rep. No. 92-26, 92d Cong., 1st Sess. (1971); House Rep. No. 92-37, 92d Cong., 1st Sess. (1971). Eighteen also is the minimum age at which a citizen may be drafted into the armed services as well as the minimum age at which a person may enlist without parental consent. 50 U.S.C.A. app. § 454(a), (c) (1981).

In most states and for most purposes, a “minor” means one below age 18:

- All jurisdictions set the age of majority at age 18 or older. Forty-four jurisdictions set age 18 as the age of majority; two jurisdictions set the age at 21, three set it at 19, and two do not set a uniform age of majority. See Appendix A.
- “In no State may anyone below the age of 18 serve on a jury.” *Thompson*, 108 S. Ct. at 4701 (Appendix B) (plurality). Forty-five jurisdictions require jurors to be 18 years or older, while three require jurors to be at least 19 years and three require jurors to be at least 21. See Appendix B.
- “No State has lowered its voting age below 18.” *Thompson*, 108 S. Ct. at 2701 (plurality). See Appendix C.
- All jurisdictions but three require unemancipated minors to be 18 years old or older to marry without parental consent. In one jurisdiction, the minimum age is 19; in one jurisdiction the minimum age is 16; in another jurisdiction, females may marry at age 15 without parental consent. See Appendix D.
- Thirty-seven jurisdictions establish 18 as the age of consent for most forms of non-emergency medical treatment; one jurisdiction puts the age at 17, one jurisdiction puts the age at 16, one sets the age at 15, one jurisdiction puts the age at 14, two permit treatment if the minor is able to

understand the decision, and eight jurisdictions have no legislation in this area. *See Appendix E.*¹

- Thirty-four jurisdictions require a person to be age 18 to receive a driver's license without parental consent; four jurisdictions set the age at 17, while thirteen set it at 16. *See Appendix F.*
- In forty-one jurisdictions, a person must be age 18 to purchase pornographic materials; five jurisdictions set the age at 17, one jurisdiction sets it at 16, one sets it at 19, one has simply outlawed obscenity by statute, one has no specified minimum age, and one jurisdiction has no legislation in this area. *See Appendix G.*
- Of the thirty-nine jurisdictions which permit gambling, thirty-one set the minimum age at 18, four set it at 21, one sets it at 19, one at 17, and two at 16. *See Appendix H.*
- Of the twenty-two jurisdictions which set a minimum age for admission to pool halls, eighteen jurisdictions put the age at 18, three set the age at 16, and one puts it at 19. *See Appendix I.*
- Of the thirty jurisdictions which set a minimum age for the right to pawn property or to sell to junk or precious metal dealers, twenty-seven set the age at 18, while three set the age at 16. *See Appendix J.*
- Many localities have juvenile curfew ordinances. The "most common upper age limit" is 18. Comment, *Juvenile Curfew Ordinances and the Constitution*, 76 Mich. L. Rev. 109, 140 (1977).

Contemporary legislative attitudes toward minors are reflected further in the development of juvenile justice systems. "Juvenile courts exist because Americans admit to a fundamental difference between children and adults."

Institute of Juvenile Administration/American Bar Association, *Juvenile Justice Standards, Standards Relating to Transfer Between Courts* 1 (1980). Every state has a comprehensive juvenile court system, *Kent v. United States*, 383 U.S. 541, 554 n.19 (1966), the principal purpose of which is to rehabilitate and the premise of which is that minors are not fully responsible for their offenses and therefore should be treated more benignly than their adult counterparts. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 551-52 (1971) (White J., concurring); Institute of Judicial Administration/American Bar Association, *Juvenile Justice Standards, Standards Relating to Transfer Between Courts* 1 (1980); *The Juvenile Court and Serious Offenders*, 35 Juv. & Family Ct. J. (Preamble) (Summer 1984).

To be sure, the "fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized." *McKeiver v. Pennsylvania*, 403 U.S. at 543-44; *see also In Re Winship*, 397 U.S. 358 (1970). But the disappointments have turned more on "the availability of resources, on the interest and commitment of the public, on the willingness to learn, and on understanding as to cause and effect," *McKeiver* 403 U.S. at 547, rather than on fundamental flaws in the juvenile court philosophy. The Court's cases, such as *McKeiver* and *Winship*, confirm that virtually none of "[t]he serious critics of the juvenile court experiment . . . question the initial decision that adolescents ought to be handled in a legal process separate from adults. The battle is over the treatment of adolescents within the separate process." Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7, 8; *see also* President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 9 (1967) (quoted in *McKeiver v. Pennsylvania*, 403 U.S. 528, 546 n.6 (1971)).

In particular, the legislation establishing juvenile court jurisdiction supports the proposition that age 18 is the relevant cut-off point between childhood and adult responsibilities. Thirty-seven states and the District of Columbia designate 18 years as the appropriate maximum age for juvenile court juris-

¹ The inequity of the death penalty for minors is illustrated by a vignette described in S. Gettinger, *Sentenced to Die* (1979). The mother of a condemned 15-year-old was asked by prison officials for parental consent to emergency treatment for her son, should he need it. The mother observed: "Now, isn't that ironic? . . . He's old enough to be put to death, but he's not old enough to get an aspirin without our consent." *Id.* at 150.

dition; one state sets the age at 19, eight set the age at 17, and four set the age at 16. S. Davis, *Rights of Juveniles: The Juvenile Justice System*, App. B (1986); National Institute for Juvenile Justice and Delinquency, U.S. Department of Justice, Major Issues in Juvenile Justice Information and Training, Youth in Adult Courts: Between Two Worlds 44, 86 n.2 (1982).

Most model standards reflect the judgment of the vast majority of jurisdictions which set age 18 as the boundary of juvenile courts. See United States Department of Health, Education and Welfare, Welfare Administration, Children's Bureau, Standards For Juvenile and Family Courts 36 (1966) (Successful experience in these courts over many years has established the soundness of this age level [18 years] of Jurisdiction"); National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act of 1968, § 2.1(i) (1979) (18 years); United States Department of Justice, National Institute for Juvenile Justice and Delinquency Prevention, Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Jurisdiction—Delinquency, Vol. IV, at 10-11 (1977) (18 years); Institute of Judicial Administration/American Bar Association, Standards Relating to Transfer Between Courts, at Standard § 1.1A and Commentary (1980) (18 years); Institute of Judicial Administration/American Bar Association, Juvenile Justice Standards, Standards Relating to Juvenile Delinquency and Sanctions, Standard 2.1 and Commentary (1980) (18 years); Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 9 (1978) (18 years). The Institute of Judicial Administration and the American Bar Association, for example, proposed that the "eighteenth birthday should define an adult for the purposes of court jurisdiction" because the "eighteenth birthday signals the achievement of majority for many legal purposes. The twenty-sixth amendment to the United States Constitution establishes a constitutional right to vote in federal elections at that age. This near consensus among the states and the federal government argues compellingly that juvenile court jurisdiction should end at eighteen." Stan-

dards Relating to Transfer Between Courts, Commentary to Standard 1.1A.²

As to capital punishment specifically, the legislative message supports the notion that if an age must be chosen, eighteen is the only principled line. When Congress has set a minimum age for execution eligibility—as it did only months ago—that age was 18. Two-thirds of the states which have spoken on age and the death penalty have set the minimum age at 18. See Appendix L.

At the national level, the federal death penalty legislation recently enacted by Congress provides that a sentence of death "shall not be carried out upon a person who is under 18 years of

² While every state and the District of Columbia have a juvenile justice system, most jurisdictions also have mechanisms permitting transfer of otherwise juvenile cases into the adult criminal justice system. At least two states—Nebraska and Arkansas—do not provide for waiver of jurisdiction. S. Davis, *supra*, at 4-1. Yet, the broad consensus of the 38 jurisdictions that recognize age 18 as the general limit to juvenile court jurisdiction demonstrates that American society recognizes age 18 as a crucial watershed in an individual's development. Whatever courts may be chosen to try a juvenile under 18 charged with murder by operation of transfer provisions, evolving standards of decency forbid the execution of such an offender.

This conclusion is consistent with the rationale underlying transfer provisions: namely, there are certain juveniles who will require punishment or treatment beyond the age of 18, the jurisdictional limitation for most juvenile courts. By permitting transfer of these juveniles to the adult system, these courts gain jurisdiction to ensure that the penal system will have sufficient time both to exact the necessary punishment and to attempt rehabilitation. Even where transfer follows an evidentiary proceeding, however—as in Oklahoma in *Thompson*—the decision to transfer a juvenile into the adult court system does not turn on questions of individualization and criminal responsibility, both constitutionally indispensable in deciding whether to impose the death penalty. Transfer and capital sentencing simply ask different questions. Comment, *Capital Punishment for Minors: An Eighth Amendment Analysis*, 74 J. Crim. L. & Criminology 1471, 1499-1501 (1983).

age at the time the crime was committed." Cong. Rec.—House 11172 (Oct. 21, 1988). When federal death penalty legislation was proposed in 1986, no minimum age was specified. An amendment to the bill, setting 18 as the minimum age, passed without recorded disagreement. *See Establishing Constitutional Procedures for the Imposition of Capital Punishment: Report of the Committee on the Judiciary*, 99th Cong., 2d Sess. 30 (1986).

At the state level, protection for minors under death penalty statutes has increased dramatically in the past quarter century. A 1961 Associated Press survey of legal possibilities in criminal proceedings involving juveniles showed a much harsher legal environment. *New York Times*, Jan. 7, 1962, at 81, col. 1. Of forty-one death penalty states at that time, the minimum age for the death penalty was age 7 in sixteen states, age 8 in three states, age 10 in three states and ages 12 to 18 in nineteen states. *Id.*

The situation today is quite different. Thirteen states and D.C. have rejected capital punishment completely. Of the 37 states retaining the death penalty, 19 set no minimum age. *Thompson* 108 S. Ct. 2694 (plurality). It can hardly be said that the states with no minimum age have deliberately authorized execution of one under 18, for there is no evidence that these states "realize[d] that [their] . . . actions would have the effect of rendering [minors under the age of 18] death-eligible or . . . [gave] the question the serious consideration that would have been reflected in the explicit choice of some minimum age for death-eligibility." *Id.* at 2711 (concurrence).

Eighteen states expressly exclude youths under age 16, 17 or 18 in their death penalty statutes. *Id.* at 2696 (plurality); Appendix L. Of these eighteen states, twelve states—a full two-thirds—establish a minimum age of 18;³ three states, set

an age 17 limit; three states have a minimum age of 16. 108 S. Ct. at 2696 n.30; Appendix L.

Further, most recent legislative activity has been in the direction of setting 18 as the minimum age. Seven of the twelve states with an age 18 minimum selected that age within the past seven years. Ohio in 1981 set 18 as its minimum age for execution; Nebraska did so in 1982; Tennessee in 1984; Colorado and Oregon in 1985; New Jersey in 1986. *See Ohio Rev. Code Ann. § 2929.02(A)* (Page 1987); *Tenn. Code Ann. §§ 37-1-102(3), (4)* (Supp. 1987); *37-1-103* (Repl. 1984), *37-1-134(a)(1)* (Repl. 1984); *Neb. Rev. Stat. § 28-105.01* (1985); *Colo. Rev. Stat. § 16-11-103* (Repl. 1986); *Or. Rev. Stat. § 161-620* (Supp. 1987); *N.J. Stat. Ann. § 2C:11-3g* (West Supp. 1988).

In April 1987, Maryland became the latest state to set 18 as the minimum age for capital punishment. *Barnes & Schmidt, Schaefer Praises Session As "Unusually Successful," Washington Post*, April 14, 1987, at A7. The Maryland Governor was "struck by the fact that the decisive Senate votes came not from the newly-elected members of that Chamber, but from Senate veterans who had opposed an exemption for minors in previous years." *See Letter from William Schaefer to Clayton Mitchell, Speaker, Maryland House of Delegates*, April 7, 1987, at 1 (reproduced at Appendix K). The Maryland House of Delegates, in putting the age at 18, reversed the Maryland House Judiciary Committee, which had set the age at 16. *Barnes, Death Penalty Exemption Advances, Washington Post*, April 11, 1987, at B4.

The recent legislative activity in Georgia, Indiana and Kentucky does not contraindicate the trend toward setting the minimum age at 18. The Georgia legislature in 1987 declined to increase its minimum age from 17 to 18. Yet the 1987 *Report of*

³ Although there is some confusion about New Hampshire, *amicus* counts New Hampshire as an age 18 state. *See N.H. Rev. Stat. § 630.5 (XIII) (Supp. 1987)* (prohibiting execution of one who was a minor at time of crime); *id.* at § 21-B:1 (Supp. 1987) (age 18 is age of majority); *but see id.* at § 630:1(v) (1986) (no one under age 17 shall be

held culpable for a capital offense). New Hampshire has never executed a person who was under age 18 at the time of the offense. V. Streib, *Death Penalty for Juveniles* 200 (1987). In the history of New Hampshire's post-*Furman* capital statute, no one under age 18 has been sentenced to death in that state.

the Georgia House Age of Criminal Responsibility Study Committee found that "a scientific poll conducted by Georgia State University and the bulk of testimony received by the Committee indicates that a majority of Georgians favor changing Georgia's law to make life imprisonment, instead of the death penalty, the maximum penalty for minors." *Id.* at 18. Not since 1957 has Georgia executed one who was less than age 18 at the time of the crime. V. Streib, *supra*, at 195.

Indiana passed its 16 year-old minimum in 1987. The Indiana legislature had before it two bills, one calling for age 16 and one calling for age 18. Primarily to avoid controversy, the Committee on Courts and Criminal Code of the Indiana House of Representatives chose to move forward with the age 16 bill rather than the age 18 bill. Over 90% of the membership of both houses (Senate and House of Representatives) voted in favor of the bill, and it was signed into law without delay by the Governor. See Bloomington (Ind.) Herald-Telephone, Mar. 26, 1987, § C, at 12, col. 2. Given this overwhelming support for a minimum age of 16, it seems likely that the age 18 bill would also have passed, albeit by a narrower margin. Indiana has not carried out a minor execution since 1920. V. Streib, *supra*, at 195.

The Kentucky legislature enacted a minimum death penalty age of 18 as part of a major juvenile court reform act in 1980 and again in 1982. See Louisville (Kentucky) Courier-Journal, Mar. 11, 1986. However, funding problems prevented this major act from ever being implemented, and it was repealed in 1984—rather incidentally taking the minimum death penalty age with it. *Id.* As a stop-gap measure, in 1986 the Kentucky legislature enacted a minimum age of 16. On February 17, 1988, the Kentucky House of Representatives voted 60 to 29 to raise the minimum age back to 18. However, the Kentucky Senate Judiciary-Criminal Committee did not get to hearings on the bill. Thus, it seems fair to characterize Kentucky as having been at age 18 and as trying to get back there. It certainly is not locked in permanently at age 16. Kentucky has not executed a person for a crime committed while lower than age 18 since 1945. V. Streib, *supra*, at 196.

In any event, capital statutes are not determinative. The legislatures that permit execution for crimes committed by minors do not deem those same minors sufficiently mature to vote, sit on a jury or engage in a wide variety of adult activities. Further, as *amicus* will now show, capital statutes authorizing the death penalty for minors have led to only a minuscule number of juvenile death sentences. Death penalty legislation alone cannot reveal society's evolving standards of decency.

2. Jury Determinations

In addition to legislative enactments, the "second societal factor the Court has examined in determining the acceptability of capital punishment to the American sensibility is the behavior of juries." *Thompson*, 108 S. Ct. at 2697. In the decade and a half since *Furman v. Georgia*, 408 U.S. 238 (1972), almost every current Justice has written or joined in opinions that look to the pattern of jury verdicts in support of a conclusion about the death penalty's constitutionality, either generally or for particular crimes.

Members of the Court have reasoned that the "jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved," *Enmund*, 458 U.S. at 795 (White, Brennan, Marshall, Blackmun & Stevens, JJ.) (quoting *Gregg v. Georgia* 428 U.S. 153, 181 (1976) (Stewart, Powell & Stevens JJ.)), and that "it is thus important to look at the sentencing decisions that juries have made in the course of assessing whether capital punishment is an appropriate penalty for the crime being tried." *Coker*, 433 U.S. at 596 (White, Stewart, Blackmun & Stevens, JJ.). In *Woodson v. North Carolina*, 428 U.S. 280, 293 (1976), a plurality consisting of Justices Stewart, Powell and Stevens cited jury refusal to convict in mandatory capital cases to support its conclusion that the mandatory statutes did not reflect evolving standards of decency. In *Lockett v. Ohio*, 438 U.S. 586, 625 (1978), Justice White wrote, in concurrence, that the death penalty could not be used if the defendant did not intend the death of the victim, even though at the time "approximately half of the states [had] not legislatively foreclosed the possibility of imposing the death

penalty upon those who did not intend to cause death." The reasoning of Justice White's concurrence in *Lockett* was endorsed by the Court in *Enmund v. Florida*, with both the majority, *see* 458 U.S. at 795, and the dissent, *see id.* at 818-20 (O'Connor, J., joined by Burger, C.J., Powell & Rehnquist, JJ.), analyzing the behavior of capital juries. The majority in *Enmund* relied on statistics showing that despite these statutes, defendants in this category rarely were sentenced to death. Justice Brennan, in *Furman*, also relied on the gap between legislative authorization of capital punishment and the number of death penalties actually inflicted:

When an unusually severe punishment is authorized for wide-scale application but not, because of society's refusal, inflicted save in a few instances, the inference is compelling that there is a deep-seated reluctance to inflict it.

Furman, 408 U.S. at 300 (Brennan, J., concurring). In *Coker*, 433 U.S. at 596, a plurality consisting of Justices Stewart, White, Blackmun and Stevens cited *Gregg's* observation that the "jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved."

Thus, the Court, while considering legislation as one measure of society's evolving standards of decency, still looks beyond those judgments to learn whether they are accurate. There is a good reason to do so:

Each lawmaker confronts capital punishment abstractly. No life depends on her vote. Legislative response tells us the degree to which we are willing to have laws permitting execution, but sentencing and execution tell us the degree to which we are willing to carry them out. A statute, furthermore, is static. It remains until changed. As public opinion shifts, older statutes become less reliable indicators of current values. Forces influence legislators that do not affect jurors. A legislator may believe, for example, that death penalty proponents in his constituency are more likely than its opponents to be single-issue voters or are more likely to organize against him, if he opposes capital punishment, than will opponents if he supports it. A constituency's willingness to vote based on a single issue and its degree of organization likely influence a lawmaker's decision and may skew the degree to which the pattern of

legislation reflects community sentiment. Of course, legislative action may accurately reflect community sentiment on the acceptability of the death penalty, either generally or in classes of cases. But without a pattern of jury response, we cannot know whether this is true or whether, instead, various political factors have combined to obscure the community view. The jury, because it is so directly involved, is needed to avoid guessing wrong.

Gillers, *Deciding Who Dies*, 129 U. Pa. L. Rev. 1, 72-73 (1980) (footnotes omitted).

The *actual practice* of sentencing minors to die, and of actually executing them, has declined to a remarkably low level. In the 6 1/2 year period from January 1, 1982 through June 30, 1988, 1,813 death sentences were imposed by juries throughout the United States. Only 41 (2.3%) of these death sentences were imposed on individuals for crimes committed while under the age of 18. *See Appendix R.* During this same 6 1/2 year period, 1.7% (1,813 of 105,997) of adults arrested for criminal homicide in the United States received the death sentence, a small portion. A microscopically small portion, only 0.5% (41 out of 8,911), of minors (younger than 18) arrested for criminal homicide received the death penalty.

Moreover, while the number of adult death sentences remained fairly constant at a rate of 250 to 300 per year, the number of minor death sentences declined in recent years. The decline is revealed by the changing populations on death row. As Appendix O indicates, thirty-eight (3.1%) of the 1,209 persons on death row as of December 31, 1983, were under death sentences for crimes committed as minors. During the next 5 1/2 years, the total death row population had a net *increase* of 69% (1,209 to 2,048), but the minor death row population had a net *decrease* of 26% (from 38 to 28). *See Appendix O* and Appendix P. Three juvenile executions occurred during this period. The remaining cases were removed from death row pursuant to post-trial litigation.

Data compiled through June 1988 established that the minor capital-sentencing rate has leveled off at a dramatically low level. Over the last six years, those under age 18 at the time of the crime have been sentenced to death as follows: 1982—11;

1983—9; 1984—6; 1985—5; 1986—7; 1987—2; 1988 (first 6 months)—1. See Appendix R. During this same period, the annual death-sentencing rate for adults has been approximately 300 per year.

Minors comprise only 1.4% of the total present death row population. As of June 30, 1988, only 28 of the 2,048 persons on death row had committed their crimes while under age 18. See Appendix P. Of these 28 people presently under a death sentence for crimes committed at age 17 or younger, two (Paula Cooper and Troy Dugar) should have their death sentences vacated based on the combined plurality and concurring opinions in *Thompson*. Juvenile death sentences have become so rare that they are cruel and unusual "in the same way that being struck by lightning is cruel and unusual." *Furman*, 408 U.S. 309 (Stewart, J., concurring).

Admittedly, this data does "not indicate how many juries have been asked" to impose the death penalty for crimes committed below the age of 18 or "how many times prosecutors have exercised their discretion to refrain from seeking the death penalty in cases where the statutory prerequisites might have been proved." *Thompson*, 108 S. Ct. at 2708 (concurrence). State record-keeping makes the collection of such information all but logically impossible. In states where the data is obtainable, however, such data supports the proposition that prosecutors are reluctant to seek, and that juries are reluctant to impose, the death penalty on minors.

In Missouri, for example, the data is available from materials gathered from that state's conduct of proportionality review. "Only one Missouri youth has been sentenced to die who was seventeen years old or younger as of his crime." *State v. Wilkins*, 736 S.W.2d 409, 420 (Mo. 1987) (Donnelly, J., dissenting), cert. granted, 108 S. Ct. 2896 (1988). Between 1978 and 1988, 13 juveniles went on trial in Missouri for potentially capital offenses. In six cases—almost half—the prosecutors exercised their discretion not to seek the death penalty. Of the seven remaining cases that reached penalty phase, juries voted for life imprisonment in six cases. Of those six cases where juries returned verdicts of life, one involved crimes committed

by a 16 year old and four involved crimes committed by 17 year olds. Only once in its 10-year post-*Furman* history has a Missouri jury voted to condemn one who was a minor at the time of the offense. During this same period, Missouri juries sentenced 69 adults (18 years old or older) to death. See Appendix S.

Similarly, in Mississippi, nine minors were indicted for capital murder between 1976 and 1981. Of these nine, prosecutors did not seek the death penalty in five cases—more than half. Four of the nine were charged capitally, and all four were convicted. *None* received the death penalty. See Database of R. Berk & J. Lowrey, Univ. of California, Santa Barbara, from Factors Affecting Death Penalty Decisions in Mississippi (1985) (unpublished paper).

Executions for crimes committed while under age 18 have been extremely rare in this century—only 2.6% of all executions. See Appendix M. Of the 101 people executed in the post-*Furman* era, only three were under the age of 18 at the time of the offense. One of the three volunteered for execution. A 20-year national hiatus in the execution of people who were minors at the time of their crimes ended when Charles Rumbaugh was executed in 1985. Rumbaugh was 17 years old at the time of the crime. Rumbaugh, however, as an adult in his twenties and after a full evidentiary hearing on his competency to waive further legal action to save his life, volunteered for execution. *Rumbaugh v. Procunier*, 753 F.2d 395 (5th Cir. 1985), cert. denied, 473 U.S. 919 (1985). Early in 1986, Terry Roach became the first nonconsensual execution of a minor since 1964; Roach, however, did not allege in his first federal habeas corpus proceeding that execution of a minor per se violates the Constitution. *Roach v. Martin*, 757 F.2d 1463 (4th Cir. 1985), cert. denied, 474 U.S. 865 (1985). Similarly, Jay Pinkerton, executed later in 1986, apparently did not raise the claim in his first habeas petition.

3. Respected Professional Organizations

The conclusion that it would offend civilized standards of decency to execute a person who was less than age 18 at the

time of the offense is consistent with the views that have been expressed by "respected professional organizations." *Thompson*, 108 S. Ct. at 2696 (plurality). The limitation of eligibility for the death penalty to those 18 years or older at the time of the offense is supported by the American Bar Association, the National Council of Juvenile and Family Court Judges, the American Law Institute's Model Penal Code, and the National Commission on Reform of Federal Criminal Laws.

The ABA passed a resolution in 1983 opposing "the imposition of capital punishment upon any person for any offense committed while under the age of eighteen." See American Bar Association Report No. 117A, approved August 1983. This resolution is especially significant because it is the first time in its history that the ABA has taken a formal position on any aspect of capital punishment.

On July 14, 1988, the National Council of Juvenile and Family Court Judges, one of the oldest and largest judicial membership organizations, passed a resolution opposing "capital punishment of those who committed an offense while under the age of eighteen years." Resolution Number 2, National Council of Juvenile and Family Court Judges (July 14, 1988). The American Law Institute's Model Penal Code has, since 1962, contained a recommendation that the death penalty not be imposed on offenders below age 18. See American Law Institute, Model Penal Code § 210.6(1)(d) (Proposed Official Draft 1962). This view was reaffirmed by revisers of the Code in 1980, despite suggestions that the age be lowered or that youth merely be considered as a mitigating circumstance. See American Law Institute, Model Penal Code § 210.6, Comment, at 133 (Official Draft and Revised Comments 1980). The National Commission on Reform of Federal Criminal Laws also took the position that 18 ought to be the minimum age. See National Commission on Reform of Federal Criminal Laws, Final Report of the New Federal Code § 3603 (1971).

4. Other Nations

That it would offend civilized standards of decency to execute a person who was less than 18 years old at the time of the

offense also finds support in the views that have been expressed by "other nations that share our Anglo-American heritage." *Thompson*, 108 S. Ct. at 2696 (plurality).

The domestic legislative evidence that age 18 is the appropriate boundary between minority and adult responsibility coincides with international law. Although incomplete, "[t]he available evidence of contemporary state practice in the application of the death penalty seems to establish a remarkably consistent adherence to the prohibition on execution of juvenile offenders in all regions and political systems." Hartman, "*Unusual*" Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty, 52 U. Cin. L. Rev. 655, 666 (1983). Of the 164 countries for which data was available, 122 imposed the death penalty. Significantly, of these 122 countries, 45 had statutory provisions recognizing youth as exempt from the death penalty: 29 of the 45 nations (65%) set the minimum age at 18, one (2%) set the age at 21, three (7%) at age 20, five (11%) at age 16, and five (11%) prohibited the execution of "minors" while two others (4%) prohibited the execution of "young people." *Id.* at 666-67 n.44. Reports of the Secretary General of the United Nations confirm that "the great majority of Member States report never condemning to death persons under 18 years of age." See United Nations, Economic and Social Council, Report of the Secretary General, *Capital Punishment* 17 (1973).

The significance of these figures is not only that nations set a minimum age, but that two-thirds of those which do set the age at 18. It is telling that the 28 condemned juveniles on America's death row could not have been sentenced to death if they had been convicted in the Soviet Union, China, Iraq, or South Africa.

Equally significant, of 81 nations which were reported to have actually executed persons in the period between 1973 and 1982, only two states officially reported executions of minors. Hartman, *supra*, at 666-667 n.44. Out of the 11,000 executions in over 80 countries recorded by Amnesty International throughout the world between January 1980 and May 1986, only eight executions (0.07%) in four countries were reported

to have been of persons who were under age 18 at the time of the crime. See Amnesty International, *United States of America: The Death Penalty* 74 (1987). Three of the eight executions were in the United States, two were in Pakistan, and one each was in Bangladesh, Rwanda and Barbados. *Id.* There were also undocumented reports of juvenile executions in Iran. *Id.* Even if executions of minors abroad are underreported, these numbers remain compelling. A nation's unwillingness to admit execution of minors is itself evidence of a norm against that practice.

Three major human rights treaties explicitly prohibit juvenile death penalties. See Article 6(5) of the International Covenant on Civil and Political Rights, Annex to G.A. Res. 2200, 21 U.N. GAOR Res. Supp. (No. 16) 53, U.N. Doc. A/6316 (1966); Article 4(5) of the American Convention on Human Rights, OAS Official Records, OEA/Ser. K/XVI/1.1, Doc. 65 Rev. 1 Corr. 1 (1970); Article 68 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287. Each of these treaties prohibits the death penalty for crimes committed below the minimum age of 18.

The United States Government has ratified the Geneva Convention, and has signed but not yet ratified the other two conventions. However, a United Nations General Assembly Resolution recognized that Article 6 of the International Covenant constitutes a "minimum standard" for all member states, not only ratifying states. Hartman, *supra*, at 681 n.94. This resolution was supported by the United States Government. *Id.*

5. Conclusion

The laws and policies discussed in this section reflect an almost universal judgment that minors ought to be treated differently from adults. Generally, there are not exceptions to that judgment. Public officials do not consider requests by especially mature minors to allow them to vote, serve as jurors, or drink alcoholic beverages. As a society, we treat those under age 18 as categorically different from adults. These lines reflect

clear distinctions between children and adults, distinctions that require the Court to draw the line at age 18 for the imposition of the death penalty.

B. The Reasons For Treating Minors Differently From Adults Apply With Special Force Here: The Developmental Differences Between Adolescents And Adults Diminish The State's Interest In Inflicting The Death Penalty On Minors

The "Constitution contemplates that in the end [the Court's] judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment." *Coker*, 433 U.S. at 597; accord *Enmund*, 458 U.S. at 797; *Gregg v. Georgia*, 428 U.S. 153, 182-83 (1976). This independent judgment is informed by "the two principal social purposes" of the death penalty: "retribution and deterrence." *Thompson*, 108 S. Ct. at 2699 (plurality) (quoting *Gregg*, 428 U.S. at 183); see also *Skipper v. South Carolina*, 476 U.S. 1, 13 (1986) (Powell, J., concurring); *Enmund*, 458 U.S. at 798-99. Execution of minors is not consistent with either of these goals.

1. Retribution

The Court has said that retribution—the expression of society's outrage at particularly offensive conduct—is a legitimate penological goal of capital punishment. *Thompson*, 108 S. Ct. at 2699 (plurality); *Spaziano v. Florida*, 468 U.S. 447, 461-62 (1984); *Enmund*, 458 U.S. at 800-01; *Gregg*, 428 U.S. at 183. But such outrage is tempered when the defendant is a minor. *Juries*, the representatives of the community whose outrage is being expressed by death sentences, seldom vote to condemn minors.

It is no accident that even in an era in which the public perceives a significant increase in juvenile crime and where public support for capital punishment is overwhelming, juries almost never vote to execute minors. Lay jurors, given the task of expressing the common sense judgment of the community, recognize that adolescents are developmentally distinct from adults, that adolescents grow up, and that young people are

uniquely capable of being rehabilitated. Juries recognize that it is unrealistic and inhumane to treat young offenders as if they have fully mature judgment and control.

In refusing to vote for the ultimate retribution for minors, juries recognize the common sense and empirically supported assumption that minors lack the maturity, experience, sophistication and judgment necessary to make many important decisions. "Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson*, 108 S. Ct. at 2699 (plurality). "Children, by definition, are not assumed to have the capacity to take care of themselves." *Schall v. Martin*, 467 U.S. 253, 265 (1984). That assumption is why the death penalty ought to be limited to adults.

"Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." *Eddings*, 455 U.S. at 116 n.12 (quoting *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring)). The Court has often expressed the rationale underlying this distinction, explaining that "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Bellotti*, 443 U.S. 622 (1979); see also *H. L. v. Matheson*, 450 U.S. at 409-11.

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.

Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982) (footnote omitted); see also *Skipper*, 476 U.S. at 12 (Powell, J., con-

curring); *New York v. Ferber*, 458 U.S. at 776 (Brennan & Marshall, JJ., concurring) (noting "the particular vulnerability of children"); *Parham v. J.R.*, 442 U.S. 584, 603 (1979) ("Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions"); *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968) (Stewart, J., concurring) ("a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees").

[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth.

Eddings, 455 U.S. at 116 n.11 (quoting Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *supra*, at 7); see also *Skipper*, 106 S. Ct. at 1675 (Powell, J., concurring); *Haley v. Ohio*, 332 U.S. 596, 599 (1948); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

"Adolescence is well recognized as a time of great physiological and psychological stress." *Thompson*, 108 S. Ct. at 2699 n.42 (plurality) (quoting Lewis, Pineus, Bard, Richardson, Pricep, Feldman & Yeager, *Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States*, 14 Am. J. Psychiatry 584, 588 (1988)). The Court has long recognized the "period of great instability which the crisis of adolescence produces." *Haley*, 332 U.S. at 599.

During the "crisis of adolescence," *Haley*, 332 U.S. at 599, minors are less mature in their ability to make sound judgments and are less able to control their conduct and to recognize the consequences of their acts. Adolescence is a time when young persons are struggling to arrive at a definition of their

own identity; adolescents are particularly likely to rebel against adult authority and to seek affirmation by their peers. E. Erikson, *Childhood and Society* 261-63 (2d ed. 1963). Adolescents are particularly emotionally dependent on other people. They are especially vulnerable to influences from peers. "The transition from childhood to adolescence is marked more by a trading of dependency on parents for dependency on peers rather than straightforward and unidimensional growth in autonomy." Steinberg & Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 Child Development 841, 848 (1986).

The adolescent's intellectual capacity to consider and to choose from the realm of possibilities in a comprehensive fashion emerges only in late adolescence and early adulthood. E. Peel, *The Nature of Adolescent Judgment* 153 (1971). Moral character is to a large degree a product of the maturation process. Kohlberg, *Development of Moral Character and Moral Ideology*, in *Review of Child Development Research* 383, 409 (M. Hoffman & L. Hoffman eds. 1964); Rest, Davison & Robbins, *Age Trends in Judging Moral Issues*, 49 Child Development 263 (1978). Most adolescents simply do not have the breadth and depth of experience which are essential to making sound judgments and to understanding the long-range consequences of their decisions. The predicate for the death penalty—society's outrage at a defendant's reprehensible moral judgments—cannot apply when the defendant lacks the capacity to engage in fully-formed moral judgments.

Further, most adolescents grow up. "For most adolescents, age alone is the cure of criminality." F. Zimring, *Background Paper*, in Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* (1978); J. Wilson & R. Herrnstein, *Crime and Human Nature* 144 (1985). For this reason, the diagnosis of antisocial personality cannot be applied until an individual has reached 18 years of age. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 319 (3rd ed. 1980). Youth is a "time of intense and unfulfilled passions, leading to crimes for goods and pleasures that older people either crave

less or can enjoy legally." J. Wilson & R. Herrnstein, *supra* at 145. Simply stated, an adult is likely to have a lower propensity for crime than a youngster because the adult is older. In this regard, "[a]ge, like gender, resists explanation because it is so robust a variable. None of the correlates of age, such as employment, peers, or family circumstances, explains crime as well as age itself." *Id.* (footnotes and reference omitted) (emphasis added).

Finally, the philosophical premises of retribution fail when applied to minors. The morality of the anger which fuels the desire for retribution is based on the killer's violation of the social compact. Society has entrusted its citizens with rights, one of which is freedom, and the murderer has grossly abused that freedom. W. Berns, *For Capital Punishment* 155 (1979). The fallacy of this retributive argument as it applies to minors is precisely that society does not entrust minors with such freedom.⁴ States do not trust their minors to vote, sit on juries or engage in a wide variety of adult activities.

2. Deterrence

The "death penalty has little deterrent force against defendants who have reduced capacity for considered choice." *Skipper*, 476 U.S. at 13 (Powell, J., concurring). The death penalty may be expected to deter only those who engage in a "cold calculus that precedes the decision to act," those who "carefully contemplate[]" their crimes. *Gregg*, 428 U.S. at 186; see also *Fisher v. United States*, 328 U.S. 463, 484 (1946) (Frankfurter, J., dissenting); W. Bowers, *Legal Homicide* 272 (1984). "The socialization processes, which include the internalization of a society's moral norms and prohibitions, undoubtedly play a role

⁴ John Stuart Mill's *On Liberty* set forth, in 1859, the classic anti-paternalist position. J.S. Mill, *On Liberty* (Penguin Classics 2d ed. 1986). Mill's logic is utilitarian and argues for the absolute prohibition of state paternalism. Yet Mill found it "hardly necessary to say that [his] doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which the law may fix as that of manhood or womanhood." *Id.* at 69.

in general deterrence." Gale, *Retribution, Punishment, and Death*, 18 U.S. Davis L. Rev. 973, 995 (1985) (footnote omitted).

With adolescents, the socialization process is as yet incomplete; for this reason, capital punishment will not likely deter other minors from committing crimes. "The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually non-existent." *Thompson*, 108 S. Ct. at 2700 (plurality). Even if one posits such a cool-headed calculation by a minor, "it is fanciful to believe that he would be deterred by the knowledge that a small number of persons his age have been executed in the 20th century." *Id.*

"Normal adolescents are distinguished from adults by their intensity of feeling, immature judgment, and impulsiveness." Lewis, Pincus, et al., *supra*, at 588. "[I]mmature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences . . ." *Bellotti*, 443 U.S. at 640-41. Adolescents live for the moment, for "an intense present," with little thought of the future consequences of their actions. Kasterbaum, *Time and Death in Adolescence*, in *The Meaning of Death* 99, 104 (H. Feifel ed. 1959). The defiant attitudes and risk-taking behaviors of some adolescents are related to their "developmental state of defiance about danger and death." Fredlund, *Children and Death From the School Setting*, 47 J. School Health 533, 535 (1977). They typically have not learned to accept the finality of death. Hostler, *The Development of the Child's Concept of Death*, in *The Child and Death* (O. Sahler ed. 1978). Adolescents tend to view death as a remote possibility; old people die, not teenagers. "Risk-taking with body safety is common in the adolescent years, through sky diving, car racing, excessive use of drugs and alcoholic beverages." Gordon, *The Tattered Cloak of Immortality*, in *Adolescence and Death* 27 (C. Coor & J. McNeil eds. 1986). Such "chance games" are played by adolescents "out of their own sense of omnipotence." Miller, *Adolescent Suicide: Etiology & Treatment*, in *Adolescent Psychiatry* 327, 329 (S. Feinstein, J. Looney, A. Schwartberg & A. Sorosky eds. 1981).

The teen years are "a period of experiment, risktaking and bravado." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *supra*, at 3. Adolescents are particularly likely to rebel and to seek affirmation by their peers. E. Erikson, *supra*, at 261-63. Many adolescents possess a "profound conviction of their own omnipotence and immortality. Thus many adolescents may appear to be attempting suicide, but they do not really believe that death will occur." Miller, *supra*, at 329; see also Hostler, *supra*, at 19. For this reason, threatening an adolescent with death will not have the same impact as threatening an adult with death.

Adolescents are less likely than adults to calculate consequences rationally; this, indeed, is the premise underlying the states' guardianship and protection of minors. It is unlikely that cold, rational calculation of risks and consequences is involved when minors commit crimes. See C. Bartollas, *Juvenile Delinquency* 102 (1985). The legal culture assumes for countless other purposes that minors, prior to acting, do not engage in the sort of responsible risk-benefit analysis that lies at the core of the deterrence theory. As *amicus* has discussed above, when adolescents do calculate, the fear of death will not be given its fair measure. Adolescents have not learned to accept death's finality.

Moreover, execution of minors will fail to deter the general population from committing crimes. Potential murderers are most likely to be deterred by the execution of one with whom the potential killer can identify; put another way, execution of a person who is particularly distinguishable from the general population will not serve to deter members of the general population. Cf. A. Goldstein, *The Insanity Defense* 13 (1967); Liebman & Shepard, *Guiding Capital Sentencing Discretion Beyond the "Boiler Plate": Mental Disorder as a Mitigating Factor*, 66 Geo. L.J. 757, 813-17 (1978). Exclusion of minors from execution would not abate the deterrent force of the death penalty for adults. Finally, because juvenile executions are so rare, their preclusion would have little impact on the deterrence of the population at large. See generally Comment, *Capital Punishment for Minors: An Eighth Amendment Analysis*, 74 J. Crim. L. & Criminology 1471, 1510-13 (1983).

C. There Is No Viable Basis For Distinguishing Among Minors For Purposes Of Administration Of The Death Penalty

The quandary of line-drawing among minors is, of course a dilemma that the Court has faced on prior occasions. In numerous cases, in numerous factual contexts, the Court has consistently sounded a single, overarching theme: that minors—simply by virtue of their status as minors—can be deprived of the rights and privileges of adults. The Court's decisions sanctioning legal disabilities for minors treat juveniles as a coherent class, and establish the age of majority as the demarcation between the period of childhood and the period of adulthood. *E.g., Ginsberg, supra; Parham, supra; Schall, supra.*

It is instructive to consider the context in which the Court has previously decided questions of juvenile law. Typically, the question presented is whether—a certain minor, or class of minors, is sufficiently mature or sophisticated to be treated as an adult and freed of a statutory or administrative restriction that affects all young people. The Court has repeatedly rejected such attempts to draw distinctions between subgroups of minors, and instead has relied on generalizations about the unique nature of childhood and the universal characteristics of children, to treat minors as a single coherent class. *E.g., Schall, 467 U.S. at 265 (“[c]hildren, by definition, are not assumed to have the capacity to care for themselves”); Prince v. Massachusetts, 321 U.S. 158, 168 (1944) (upholding the state’s right to restrict a minor’s employment opportunities, because “[t]he state’s authority over children’s activities is broader than over like actions by adults”).*

The series of decisions addressing the privacy rights of a young woman to an abortion constitute the only factual context in which the Court has tolerated case-by-case determinations on the basis of the relative maturity or immaturity of individual youths. *See Planned Parenthood of Missouri, supra; Bellotti, supra; H.L. v. Matheson, supra.* However, the Court has permitted such case-by-case determinations only in order to avoid irrevocable harm. In *Bellotti*, the Court recognized that “considering her probable education, employment skills, finan-

cial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor.” 443 U.S. at 642. Accordingly, the Court struck down a parental veto statute that would have imposed the “grave and indelible” consequences of “unwanted motherhood” upon mature minors who were capable of rationally considering the alternatives. *Id.*

Unlike the prior cases involving minors’ rights, where an individual minor (or a litigant acting on behalf of the minor) sought to divide artificially the general class of minors into subclasses of mature and immature minors for the sake of expanding mature minors’ rights, here it is the State that is asking the Court to engage in such artificial case-by-case decision making. The State asserts, in effect, that certain minors are sufficiently mature and sophisticated so as to fall outside the general category of youth and be subjected to the perquisites (here, the penalties) of adulthood.

The case-by-case decisionmaking urged by the State cannot be squared with the Court’s prior decisions in the area of minors’ rights. There can be no justification for employing a one-way analysis that forbids case-by-case decisionmaking for the sake of *expanding* minors’ rights while employing that very same form of decisionmaking for the sake of *extinguishing* the greatest of all rights, the right to life.

The only principled distinction between minority and adulthood in the context of capital punishment is the very same distinction that the Court and legislatures have repeatedly used in defining the rights of minors: the age of majority—which almost universally means age 18. For this reason, the Court should rule that people who were minors at the time of the offense cannot be executed.

CONCLUSION

The Court should hold that execution of people who were younger than age 18 at the time of their offense violates the eighth and fourteenth amendments.

Respectfully submitted,

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DATED: November 18, 1988

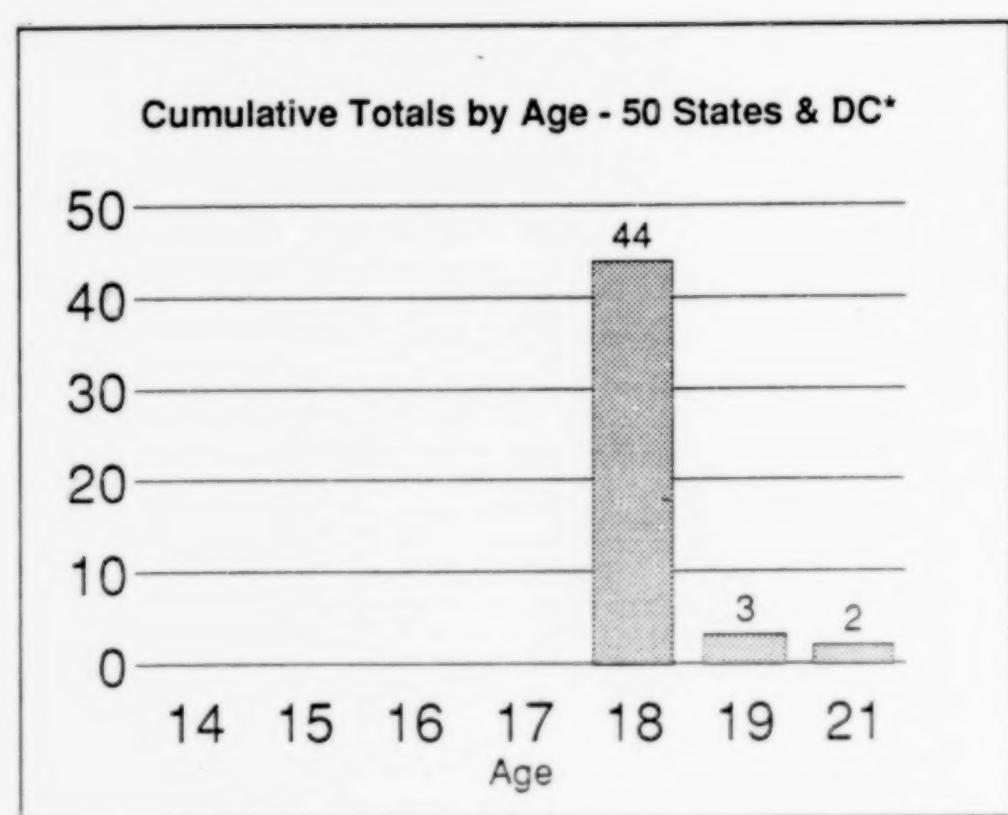
*Counsel gratefully acknowledge the valuable assistance of Bettina Buehler, Judith Dillon, and Lynn Felici, law students at Vermont Law School, in the preparation of this brief.

APPENDIX

(a1)

APPENDIX A

Age of Majority



*Two states (MO and NY) have no uniform age of majority.

(a2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	19	Ala. Code § 26-1-1 (1986)
AK	18	Alaska Stat. § 25.20.010 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 1-215 (1974)
AR	18	Ark. Stat. Ann. § 9-25-101 (1987)
CA	18	Cal. Civil Code § 25.1 (West 1982)
CO	18	Colo. Rev. Stat. § 13-22-101 (1974)
CT	18	Conn. Gen. Stat. § 1-1d (Supp. 1988)
DL	18	Del. Code Ann. tit. 1, § 701 (1975)
DC	18	D.C. Code Ann. § 30-401 (1981)
FL	18	Fla. Stat. Ann. § 743.07 (West 1986)
GA	18	OCGA § 39-1-1 (1982)
HI	18	Haw. Rev. Stat. § 577-1 (Repl. 1985)
ID	18	Idaho Code § 32-101 (1983)
IL	18	Ill. Ann. Stat. ch. 1101/2 para. 41-1 (Supp. 1988)
IN	18	Ind. Code Ann. § 34-1-67-1 (Burns Supp. 1980)
IA	18	Iowa Code Ann. § 599.1 (West 1981)
KS	18	Kan. Stat. Ann. § 38-101 (1986)
KY	18	Ky. Rev. Stat. Ann. § 2.015 (Michie/ Bobbs-Merrill 1985)
LA	18	La. Civ. Code Ann. art. 37 (West 1987)
ME	18	Me. Rev. Stat. Ann. tit. 1, § 72 (1979)
MD	18	Md. Ann. Code art. 1, § 24 (1981)
MA	18	Mass. Gen. Laws Ann. ch. 4, § 7 Cl. fifty-first (West 1986)

(a3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MI	18	Mich. Comp. Laws Ann. § 722.52 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 645.451 (West Supp. 1988)
MS	21	Miss. Code. Ann. § 1-3-27 (1972)
MO	—	Not Uniform
MT	18	Mont. Code Ann. § 411-1-101 (1987)
NE	19	Neb. Rev. Stat. § 38-101 (1984)
NV	18	Nev. Rev. Stat. § 129.010 (1957)
NH	18	N.H. Rev. Stat. Ann. 21:44 (1987)
NJ	18	N.J. Stat. Ann. § 9:17 B-3 (Supp. 1988)
NM	18	N.M. Stat. Ann. § 28-6-1 (1983)
NY	—	Not Uniform
NC	18	N.C. Gen. Stat. § 48A-2 (1984)
ND	18	N.D. Cent. Code § 14-10-01 (1981)
OH	18	Ohio Rev. Code Ann. § 3109.01 (Baldwin 1983)
OK	18	Okl. Stat. Ann. tit. 15, § 13 (West 1983)
OR	18	Or. Rev. Stat. § 109-510 (1985)
PA	21	Pa. Stat. Ann. tit. 1-6, § 1991 (Purdon 1986)
RI	18	R.I. Gen. Laws § 15-12-1 (1981)
SC	18	S.C. Const. art. XVII, § 14 (1984)
SD	18	S.D. Codified Laws Ann. § 26-1-1 (1984)
TN	18	Tenn. Code Ann. § 1-3-105 (Repl. 1985)
TX	18	Tex. Fam. Code Ann. § 11.01(1) (Vernon 1986)

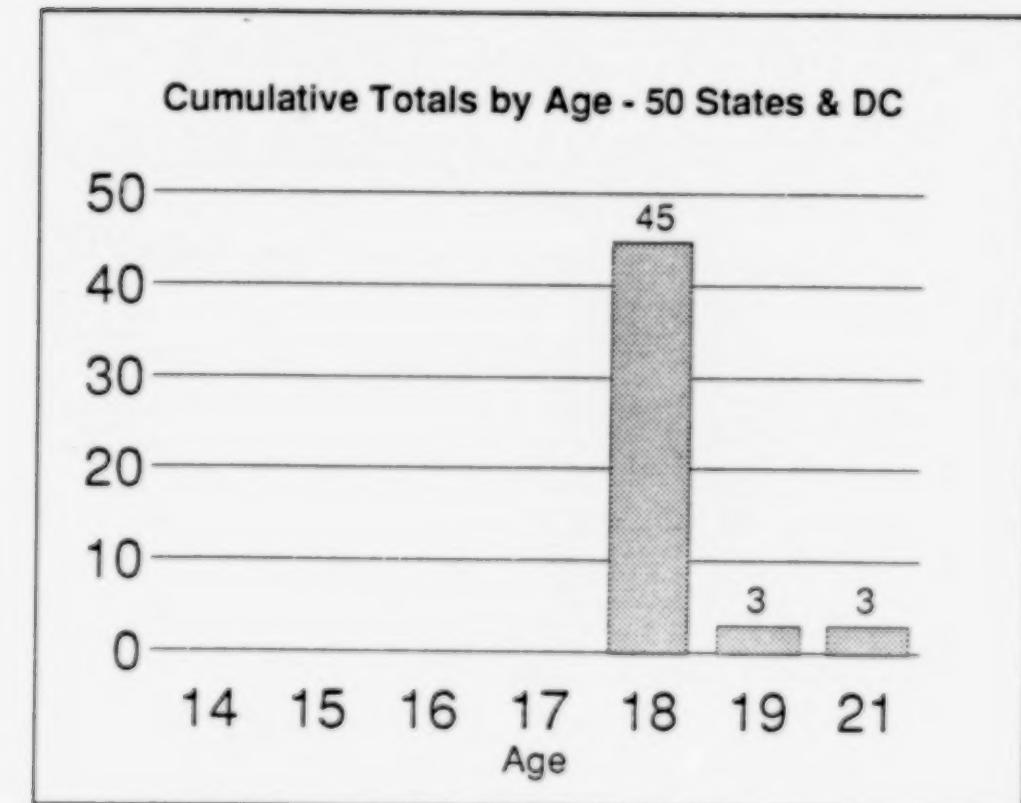
(a4)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
UT	18	Utah Code Ann. § 15-2-1 (Repl. 1986)
VT	18	Vt. Stat. Ann. tit. 1, § 173 (Repl. 1986)
VA	18	Va. Code Ann. § 1-13.42 (Repl. 1987)
WA	18	Wash. Rev. Code Ann. § 26.28.010 (1986)
WV	18	W. Va. Code § 2-2-10 (aa) (Repl. 1987)
WI	18	Wis. Stat. Ann. § 990.01(20) (West 1985)
WY	19	Wyo. Stat § 14-1-101 (1986)

Totals (50 States and D.C.)

<u>Age</u>	<u>18</u>	<u>19</u>	<u>21</u>	<u>Not Uniform</u>
<u>Number</u>	44	3	2	2

(b1)

APPENDIX B**Right to Serve on Jury**

(b2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	19	Ala. Code § 12-16-60(a)(1) (Repl. 1986)
AK	18	Alaska Stat. § 09.20.010(a)(3) (Supp. 1987)
AZ	18	Ariz. Rev. Stat. Ann. § 21-301(D) (Supp. 1987)
AR	18	Ark. Stat. Ann. § 16-31-101 (1987)
CA	18	Cal. Civ. Proc. § 198(a)(1) (Supp. 1988)
CO	18	Colo. Rev. Stat. § 13-71-109(2)(a) (Repl. 1987)
CT	18	Conn. Gen. Stat. § 51-217 (Supp. 1988)
DL	18	Del. Code Ann. tit. 10, § 4506(b)(1) (Supp. 1986)
DC	18	D.C. Code Ann. § 11-1906(b)(1)(C) (Supp. 1987)
FL	18	Fla. Stat. Ann. § 40.01 (West Supp. 1988)
GA	18	OCGA § 15-12-40 (Supp. 1987)
HI	18	Haw. Rev. Stat. § 612-4 (Repl. 1985)
ID	18	Idaho Code § 2-209(2)(a) (Supp. 1988)
IL	18	Ill. Ann. Stat. ch. 78, para. 2 (Supp. 1988)
IN	18	Ind. Code Ann. § 33-4-5-2 (Supp. 1988)
IA	18	Iowa Code Ann. § 607(A).4(1)(a) (1988)
KS	18	Kan. Stat. Ann. § 43-156 (1986)
KY	18	Ky. Rev. Stat. Ann. § 29A.080(2)(a) (Supp. 1987)
LA	18	La. Code Crim. Proc. Ann. art. 401(a)(2) (Supp. 1988)

(b3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
ME	18	Me. Rev. Stat. Ann. tit. 14, § 1211 (Supp. 1987)
MD	18	Md. Cts. & Jud. Proc. Code Ann. § 8-104 (Repl. 1984)
MA	18	Mass. Gen. Laws. Ann. ch. 234, § 1 (Supp. 1988), ch. 51, § 1 (West 1975)
MI	18	Mich. Comp. Laws Ann. § 600.1307a(1)(a) (Supp. 1988)
MN	18	Minn. Stat. Ann. § 593.41(2)(2) (1988)
MS	21	Miss. Code Ann. § 13-5-1 (1972)
MO	21	Mo. Ann. Stat. § 494.010 (Supp. 1988)
MT	18	Mont. Code Ann. § 3-15-301 (1987)
NE	19	Neb. Rev. Stat. § 25-1601 (1985)
NV	18	Nev. Rev. Stat. § 6.010 (1986)
NH	18	N.H. Rev. Stat. Ann. §§ 500-A:1 to 500-A:2 (Repl. 1983)
NJ	18	N.J. Stat. Ann. § 9-17B (Supp. 1988)
NM	21	N.M. Stat. Ann. § 38-5-1 (Repl. 1987)
NY	18	N.Y. Judiciary Law § 510(2) (Supp. 1988)
NC	18	N.C. Gen. Stat. § 9-3 (1986)
ND	18	N.D. Cent. Code § 27-09.1-08(2)(b) (Supp. 1987)
OH	18	Ohio Rev. Code Ann. § 2313.42 (Baldwin 1984)
OK	18	Oklahoma Stat. Ann. tit. 38, § 28 (Supp. 1988)
OR	18	Or. Rev. Stat. § 10.030(2)(c) (1987)
PA	18	Pa. Stat. Ann. tit. 42, § 4521 (Supp. 1988)

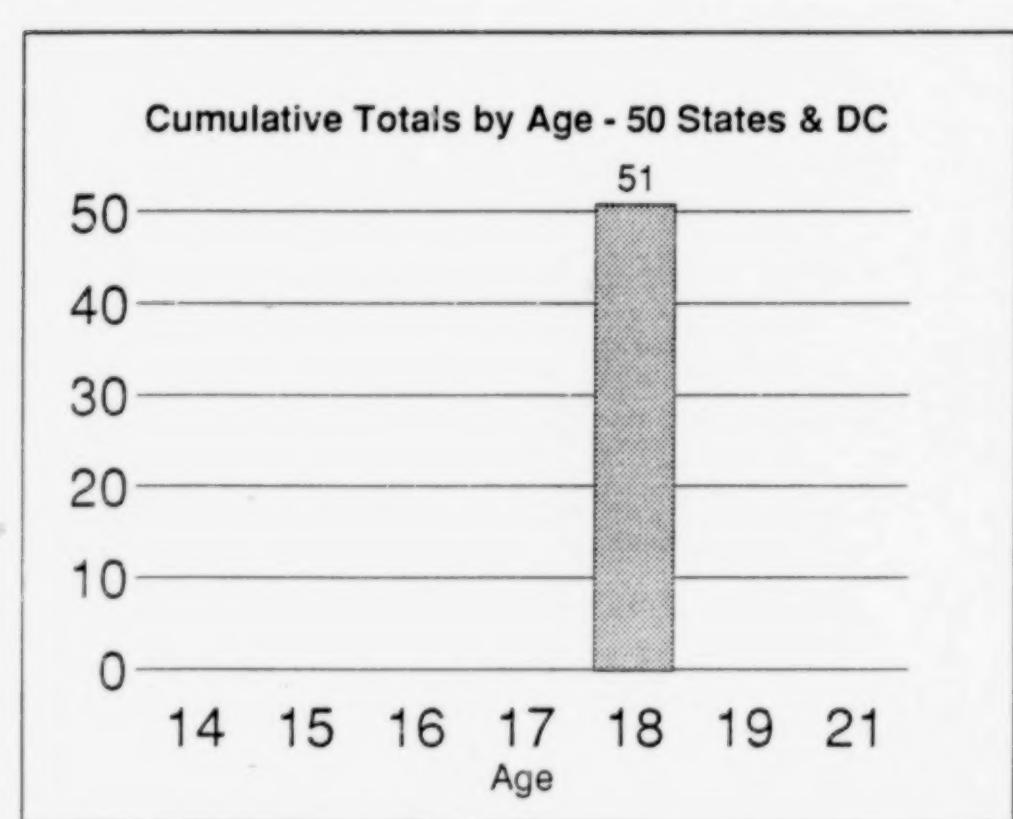
(b4)

(c1)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
RI	18	R.I. Gen. Laws § 9-9-1 (1985)
SC	18	S.C. Code Ann. § 14-7-130 (Supp. 1987)
SD	18	S.D. Codified Laws Ann. § 16-13-10 (1987)
TN	18	Tenn. Code Ann. § 22-1-101(1) (Repl. 1980)
TX	18	Tex. Gov't Code Ann. § 62.102 (Vernon 1987)
UT	18	Utah Code Ann. § 78-46-7(1)(b) (Repl. 1987)
VT	18	Vt. Stat. Ann.—Administrative Orders and Rules: Qualification List, Selection and Summoning of All Jurors—Rule 25 (Repl. 1986)
VA	18	Va. Code Ann. § 8.01-337 (Supp. 1988)
WA	18	Wash. Rev. Code Ann. § 2.36.070 (1988)
WV	18	W. Va. Code § 52-1-8(b)(1) (Supp. 1988)
WI	18	Wis. Stat. Ann. § 756.01(1) (1981)
WY	19	Wyo. Stat. § 1-11-101 (1988)

Totals (50 States and D.C.)

<u>Age</u>	<u>18</u>	<u>19</u>	<u>21</u>
<u>Number</u>	<u>45</u>	<u>3</u>	<u>3</u>

APPENDIX C**Right to Vote**

(c2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	18	[No provisions beyond reference to U.S. Const., Amdt. 26]
AK	18	Alaska Const., Art. V, § 1 (1980)
AZ	18	Ariz. Rev. Stat. § 16-121 (Supp. 1987)
AR	18	Ark. Stat. Ann. § 7-8-401 (1987)
CA	18	Cal. Const., Art. 2, § 2 (1983)
CO	18	Colo. Rev. Stat. § 1-2-101 (Repl. 1980)
CT	18	Conn. Const., Amdt. Art. 9 (1985); Conn. Gen. Stat. § 9-12 (Supp. 1988)
DL	18	Del. Code Ann. tit. 15, § 1701 (Repl. 1981)
DC	18	D.C. Code Ann. § 1-1311(b)(1) (Repl. 1987)
FL	18	Fla. Stat. Ann. § 97.041 (1982)
GA	18	OCGA § 21-2-219 (1986)
HI	18	Haw. Rev. Stat. tit. 2, § 11-12 (Repl. 1985)
ID	18	Idaho Code § 34-402 (Supp. 1988)
IL	18	Ill. Stat. Ann. ch. 46, para. 3-1 (Supp. 1988)
IN	18	Ind. Code Ann. § 3-7-1-1 (Supp. 1987)
IA	18	Iowa Code Ann. § 47-4 (Supp. 1988)
KS	18	Kan. Const., Art. 5, § 1 (1978)
KY	18	Ky. Const. § 145 (Repl. 1979)
LA	18	La. Const., Art. 1, § 10 (1977); La. Rev. Stat. Ann. § 18:101 (1979)
ME	18	Me. Rev. Stat. Ann. tit. 21A, § 111(2) (Supp. 1987)

(c3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MD	18	Md. Ann. Code art. 33, § 3-4(b)(2) (Repl. 1986)
MA	18	Mass. Gen. Laws Ann. ch. 51, § 1 (Supp. 1988)
MI	18	Mich. Comp. Laws Ann. § 168.492 (Supp. 1988)
MN	18	Minn. Stat. Ann. § 201.014 (Supp. 1988)
MS	18	Miss. Const., Art. 12, § 241 (Supp. 1987)
MO	18	Mo. Const., Art. VIII, § 2 (Supp. 1988)
MT	18	Mont. Const., Art. IV, § 2 (1987); Mont. Code. Ann. § 13-1-11 (1987)
NE	18	Neb. Const., Art. 6, § 1 (1986-1987); Neb. Rev. Stat. § 32-223 (1984)
NV	18	Nev. Rev. Stat. § 293.485 (Supp. 1987)
NH	18	N.H. Const., Pt. 1, Art. 11 (Supp. 1987)
NJ	18	N.J. Const., Art. 2, para. 3 (Supp. 1988)
NM	18	[No provisions beyond reference to U.S. Const., Amdt. 26]
NY	18	N.Y. Elec. Law § 5-102 (1978)
NC	18	N.C. Gen. Stat. § 163-55 (1987)
ND	18	N.D. Const., Art. II, § 1 (Repl. 1981)
OH	18	Ohio Const., Art. V, § 1 (1979); Ohio Rev. Code Ann. §§ 3503.01 & 3503.11 (1982)
OK	18	Oklahoma Const., Art. III, § 1 (1981)
OR	18	Or. Const., Art. II, § 2 (1987)

(c4)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
PA	18	Pa. Stat. Ann. tit. 25, § 2811 (1988)
RI	18	R.I. Gen. Laws § 17-1-3 (Supp. 1987)
SC	18	S.C. Code Ann. § 7-5-610 (Supp. 1987)
SD	18	S.D. Const., Art. VII, § 2 (1978); S.D. Codified Laws Ann. § 12-3-1 (1982)
TN	18	Tenn. Code Ann. § 2-2-102 (Repl. 1985)
TX	18	Tex. Elec. Code Ann. § 11.002 (Supp. 1988)
UT	18	Utah Code Ann. § 20-1-17 (Repl. 1984)
VT	18	Vt. Stat. Ann. tit. 17, § 2121 (1982)
VA	18	Va. Const. Art. II, § 1 (Repl. 1987)
WA	18	Wash. Const. Art. VI, § 1, Amdt. 63 (Supp. 1988)
WV	18	W. Va. Code § 3-1-3 (Repl. 1987)
WI	18	Wis. Const., Art. 3, § 1 (Supp. 1987); Wis. Stat. Ann. §§ 6.02 & 6.05 (1986)
WY	18	Wyo. Stat. § 22-1-102(k) (Supp. 1987)

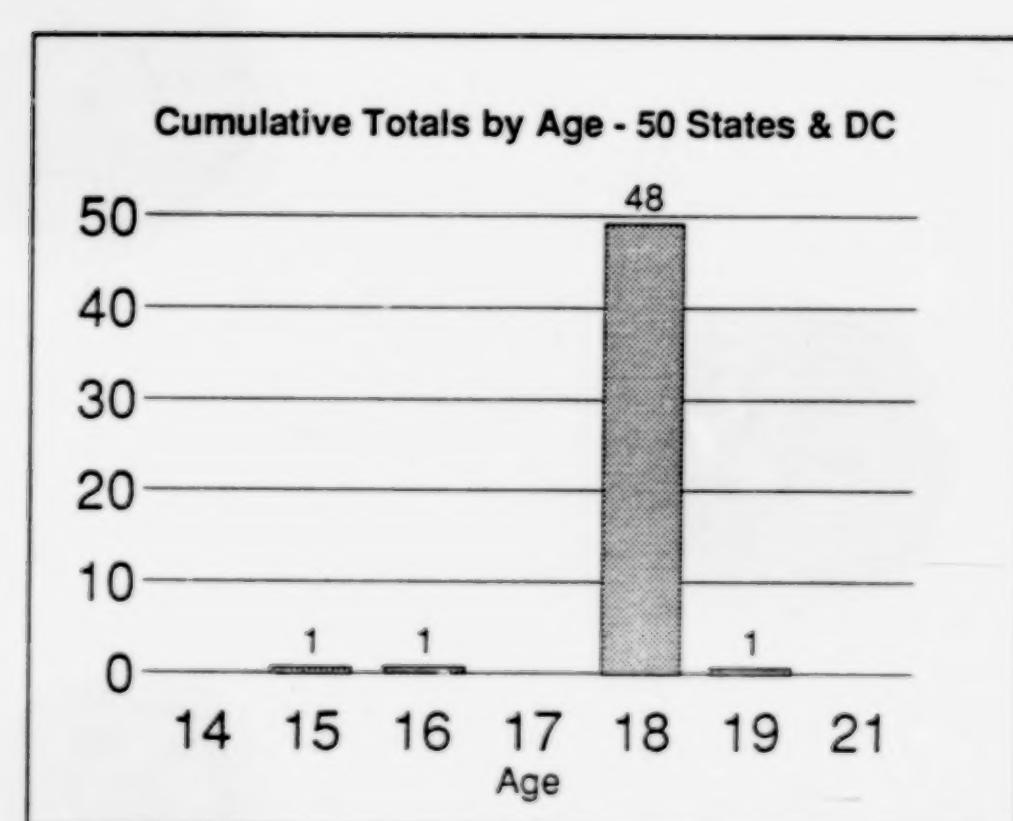
Totals (50 States and D.C.)

Age 18
Number 51

(d1)

APPENDIX D

Right to Marry Without Parental Consent



(d2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	18	Ala. Code § 30-1-5 (Repl. 1983)
AK	18	Alaska Stat. § 25.05.171 (1983) (judge may permit minor to marry without parental consent, even in the face of parental opposition, in certain circumstances)
AZ	18	Ariz. Rev. Stat. Ann. § 25-102(A) (1976)
AR	18	Ark. Stat. Ann. § 9-11-102 through 9-11-105 (1987)
CA	18	Cal. Civ. Code § 4101 (1983)
CO	18	Colo. Rev. Stat. § 14-2-106(1)(a)(I) (Repl. 1987)
CT	18	Conn. Gen. Stat. § 46b-30 (1986)
DL	18	Del. Code Ann. tit. 13, § 123 (Repl. 1981)
DC	18	D.C. Code Ann. § 30-111 (1981)
FL	18	Fla. Stat. Ann. § 741.04 (1986)
GA	18	OCGA § 19-3-37 (1982)
HI	18	Haw. Rev. Stat. § 572-2 (Repl. 1985)
ID	18	Idaho Code § 32-202 (1988)
IL	18	Ill. Ann. Stat. ch. 40, para. 203(1) (Supp. 1988)
IN	18	Ind. Code Ann. § 31-7-1-6 (Burns Supp. 1988)
IA	18	Iowa Code Ann. § 595.2 (1981 & Supp. 1988)
KS	18	Kan. Stat. Ann. § 23-106 (1981)

(d3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
KY	18	Ky. Rev. Stat. Ann. § 402.210 (Michie/ Bobbs-Merrill 1984)
LA	18	La. Civ. Code Ann. art. 87 (Supp. 1988) (minors not legally prohibited from marrying, even without parental consent, but marriage ceremony required); La. Rev. Stat. Ann. § 9:21 (Supp. 1988) (official may not perform marriage ceremony in which a minor is a party without parental consent; Comments to Civ. Code Ann. art. 87 suggest that such a marriage is valid but that official may face sanctions)
ME	18	Me. Rev. Stat. Ann. tit. 19, § 62 (Supp. 1987)
MD	16	Md. Fam. Law Code Ann. § 2-301 (Supp. 1987)
MA	18	Mass. Gen. Laws. Ann. Ch. 207 § 7 (1988)
MI	18	Mich. Comp. Laws Ann. § 551.103 (1988)
MN	18	Minn. Stat. Ann. § 517.02 (Supp. 1988)
MS	15	Miss. Code Ann. § 93-1-5(d) (Supp. 1987) (female may marry at 15 without parental consent)
MO	18	Mo. Ann. Stat. § 451.090 (Vernon 1986)
MT	18	Mont. Code Ann. § 40-1-202 (1987)
NE	19	Neb. Rev. Stat. § 42-105 (1984)
NV	18	Nev. Rev. Stat. § 122.020 (1986)
NH	18	N.H. Rev. Stat. Ann. § 457:5 (1983)
NJ	18	N.J. Stat. Ann. § 9:17 B-1 (Supp. 1988)
NM	18	N.M. Stat. Ann. § 40-1-6 (Repl. 1986)

(d4)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
NY	18	N.Y. Domestic Relations Law § 15 (1988)
NC	18	N.C. Gen. Stat. § 51-2 (Supp. 1987)
ND	18	N.D. Cent. Code § 14-03-02 (1981)
OH	18	Ohio Rev. Code Ann. § 3101.01 (Supp. 1987)
OK	18	Oklahoma Stat. Ann. tit. 43, § 3 (West 1979)
OR	18	Or. Rev. Stat. § 106.060 (1987)
PA	18	Pa. Stat. Ann. tit. 48, § 1-5 (Purdon Supp. 1988)
RI	18	R.I. Gen. Laws § 15-2-11 (1981)
SC	18	S.C. Code Ann. § 20-1-250 (1985)
SD	18	S.D. Codified Laws Ann. § 25-1-9 (1984)
TN	18	Tenn. Code Ann. § 36-3-106 (Supp. 1987)
TX	18	Tex. Fam. Code Ann. § 1.51 (Supp. 1988)
UT	18	Utah Code Ann. § 30-1-9 (Repl. 1984)
VT	18	Vt. Stat. Ann. tit. 18, § 5142 (Repl. 1987)
VA	18	Va. Code Ann. § 20-48 (Repl. 1983)
WA	18	Wash. Rev. Code Ann. § 26.04.210 (1986)
WV	18	W. Va. Code § 48-1-1 (Repl. 1986)
WI	18	Wis. Stat. Ann. § 765.02(2) (Supp. 1987)

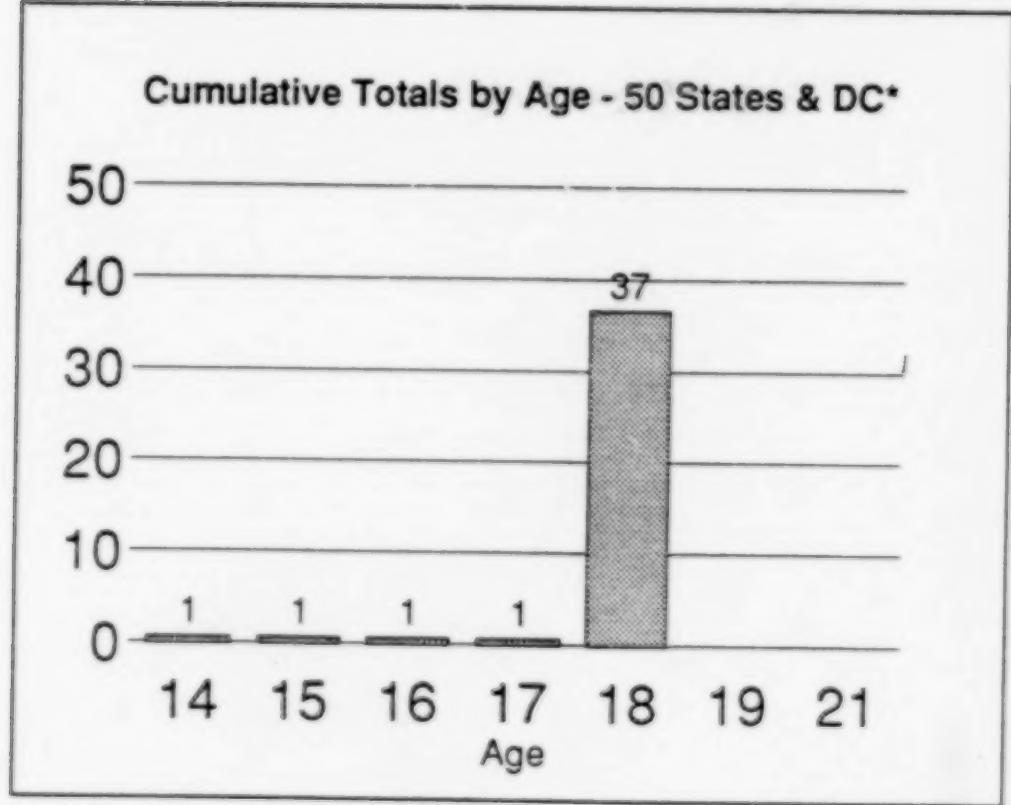
(d5)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>			
WY	18	Wyo., Stat. § 20-1-102(c) (1987)			
<u>Totals (50 States and D.C.)</u>					
<u>Age</u>	<u>15</u>	<u>16</u>	<u>18</u>	<u>19</u>	
<u>Number</u>	<u>1</u>	<u>1</u>	<u>48</u>	<u>1</u>	

(e1)

APPENDIX E

**Consent to Most Forms of
Medical Treatment**



*Eight states have no relevant legislation (DC, MI, NE, NH, VT, WV, WI, and WY), and two states (AR and MS) permit consent if the minor is able to understand the decision.

(e2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	14	Ala. Code § 22-8-4 (Repl. 1984)
AK	18	Alaska Stat. § 09.65.100 (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 44-132 (1967)
AR	minor able to understand	Ark. Stat. Ann. § 20-9-602 (1987)
CA	18	Cal. Civ. Code § 25.8 (West 1982)
CO	18	Colo. Rev. Stat. § 13-22-103 (Supp. 1986)
CT	18	Conn. Gen. Stat. Ann. §§ 46b-150d (1986)
DL	18	Del. Code Ann. tit. 13, § 707 (1981)
DC	—	No Legislation
FL	18	Fla. Stat. Ann. § 743.064 (West 1986)
GA	18	OCGA § 31-9-2 (1985)
HI	17	Haw. Rev. Stat. § 577A-2 (1976)
ID	18	Idaho Code § 39-3801 (1985)
IL	18	Ill. Ann. Stat. ch. 111, para. 4501 (Smith-Hurd 1978)
IN	18	Ind. Code Ann. § 16-8-3-1 (Burns 1973)
IA	18	Iowa Code Ann. § 147.137 (Supp. 1988)
KS	18	Kan. Stat. Ann. § 38-122 (1986)
KY	18	Ky. Rev. Stat. Ann. § 216B.400 (Michie/Bobbs-Merrill 1982)
LA	18	La. Rev. Stat. Ann. 40, § 40:1095 (West 1977)
ME	18	Me. Rev. Stat. Ann. tit. 32, § 3292 (Supp. 1986)
MD	18	Md. Health-Gen. Code Ann. § 20-102 (1982)

(e3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MA	18	Mass. Gen. Laws. Ann. ch. 112 § 12F (West 1983)
MI	—	No Legislation
MN	18	Minn. Stat. Ann. § 144.341 (West 1987)
MS	minor able to understand	Miss. Code Ann. § 41-41-3 (Supp. 1986)
MO	18	Mo. Ann. Stat. § 431.061 (Vernon Supp. 1988)
MT	18	Mont. Code Ann. § 41-1-402 (1987)
NE	—	No Legislation
NV	18	Nev. Rev. Stat. § 129.030 (1957)
NH	—	No Legislation
NJ	18	N.J. Stat. Ann. § 9:17B-1 (West Supp. 1987)
NM	18	N.M. Stat. Ann. § 24-10-1 (1986)
NY	18	N.Y. Pub. Health Law § 2504 (McKinney 1985)
NC	18	N.C. Gen. Stat. § 90-21.1 (1985)
ND	18	N.D. Cent. Code § 14-10-17.1 (1981)
OH	18	Ohio Rev. Code Ann. § 2317.54 (Supp. 1987)
OK	18	Okl. Stat. Ann. tit. 63, § 2602 (West 1984)
OR	15	Or. Rev. Stat. § 109.640 (1985)
PA	18	Pa. Stat. Ann. tit. 35 § 10101 (Purdon 1977)
RI	16	R.I. Gen. Laws § 23-4.6-1 (1985)
SC	18	S.C. Code Ann. § 20-7-280 (Law. Co-op. 1985)

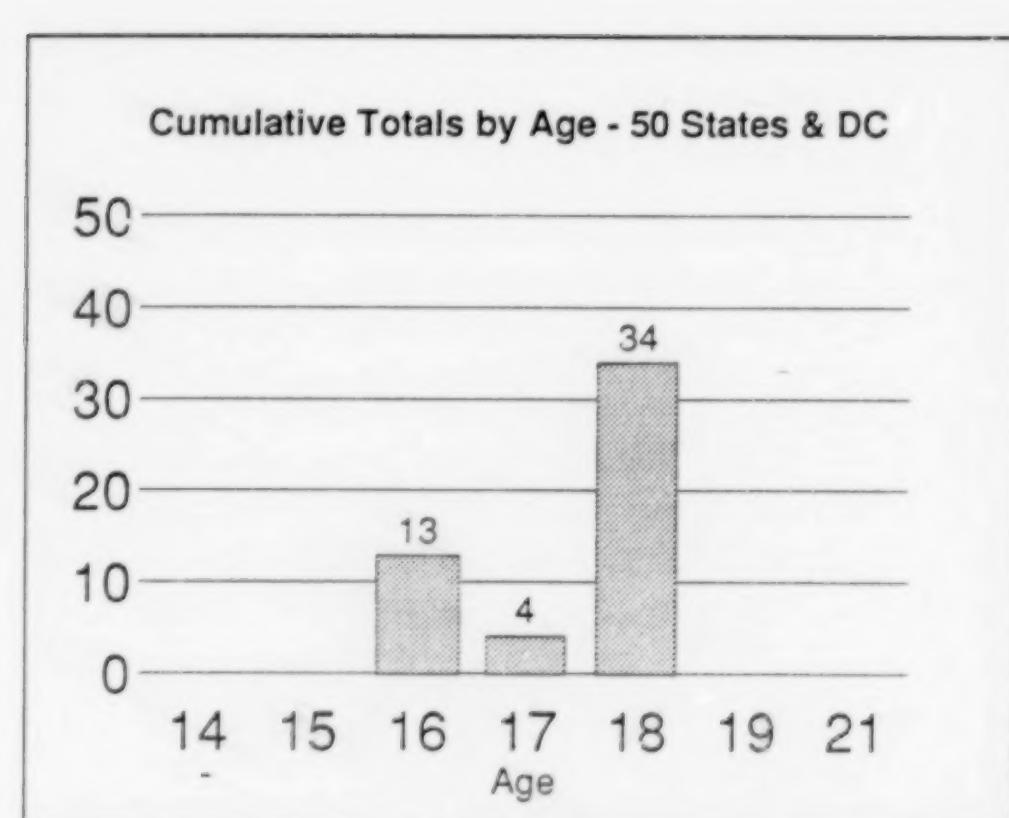
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<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
SD	18	S.D. Codified Laws Ann. § 20-9-4.2 (Supp. 1986)
TN	18	Tenn. Code Ann. §§ 63-6-220, 63-6-222, 63-6-223 (Repl. 1986)
TX	18	Tex. Fam. Code Ann. § 35.03 (1986)
UT	18	Utah Code Ann. § 78-14-5(4)(e) (Repl. 1977)
VT	—	No Legislation
VA	18	Va. Code Ann. § 54-325.2 (Supp. 1987)
WA	18	Wash. Rev. Code Ann. § 26.28.015(5) (1986)
WV	—	No Legislation
WI	—	No Legislation
WY	—	No Legislation

Totals (50 States and D.C.)

<u>Age</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>17</u>	<u>18</u>	<u>minor able to understand</u>	<u>No Legislation</u>
<u>Number</u>	1	1	1	1	37	2	8

(f1)

APPENDIX F**Right to Drive Without Parental Consent**

(f2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	16	Ala. Code § 32-6-7(1) (Repl. 1983)
AK	18	Alaska Stat. § 28.15.071 (Supp. 1987)
AZ	18	Ariz. Rev. Stat. Ann. §§ 28-413(A)(1) (Supp. 1987)
AR	18	Ark. Stat. Ann. 27-16-702(a)(1), (c)(3) (Supp. 1987)
CA	16	Cal. Veh. Code § 12507 (1987)
CO	18	Colo. Rev. Stat. § 42-2-107(1) (Repl. 1984)
CT	18	Conn. Gen. Stat. § 14-36 (1987)
DL	16	Del. Code Ann. tit. 21, § 2707 (Repl. 1985)
DC	16	D.C. Code Ann. § 40-301 (1981)
FL	18	Fla. Stat. Ann. § 322.09 (1988)
GA	18	OCGA § 40-5-26 (1985)
HI	18	Haw. Rev. Stat. § 286-112 (Rep. 1985)
ID	18	Idaho Code § 49-313 (Supp. 1987)
IL	18	Ill. Ann. Stat. ch. 95-1/2, para. 6-103 (Supp. 1988)
IN	18	Ind. Code Ann. § 9-1-4-32 (Repl. 1987)
IA	16	Iowa Code Ann. § 321.177 (1985 & Supp. 1988)
KS	16	Kan. Stat. Ann. § 8-237 (1982)
KY	18	Ky. Rev. Stat. Ann. § 186.470 (Michie/ Bobbs-Merrill Supp. 1986)
LA	18	La. Rev. Stat. Ann. § 32:407 (Supp. 1988)
ME	18	Me. Rev. Stat. Ann. tit. 29, § 585 (Supp. 1987)

(f3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MD	16	Md. Transp. Code Ann. § 16-103 (Repl. 1987)
MA	18	Mass. Gen. Laws. Ann. ch. 90, § 8 (1985 & Supp. 1988)
MI	18	Mich. Comp. Laws Ann. § 257-308 (Supp. 1988)
MN	18	Minn. Stat. Ann. § 171.04 (1986)
MS	17	Miss. Code Ann. § 63-1-23 (Supp. 1987)
MO	16	Mo. Ann. Stat. § 302.060 (Supp. 1988)
MT	16	Mont. Code Ann. § 61-5-105 (1985) (15- year-olds may drive without parental consent if they pass a driver's education course)
NE	16	Neb. Rev. Stat. § 60-407 (1984)
NV	16	Nev. Rev. Stat. § 483.250 (1986)
NH	18	N.H. Rev. Stat. Ann. § 263:17 (Supp. 1987)
NJ	17	N.J. Stat. Ann. § 39:3-10 (Supp. 1988)
NM	18	N.M. Stat. Ann. § 66-5-11 (Repl. 1984)
NY	18	N.Y. Veh. & Traf. Law § 502 (1986)
NC	18	N.C. Gen. Stat. § 20-11 (1983)
ND	18	N.D. Cent. Code § 39-06-08 (Repl. 1987)
OH	18	Ohio Rev. Code Ann. § 4507.07 (Supp. 1987)
OK	16	Oкла. Stat. Ann. tit. 47, § 6-107 (1988)
OR	18	Or. Rev. Stat. § 807.060 (1987)
PA	17	Pa. Stat. Ann. tit. 75, § 1503 (Purdon 1977)

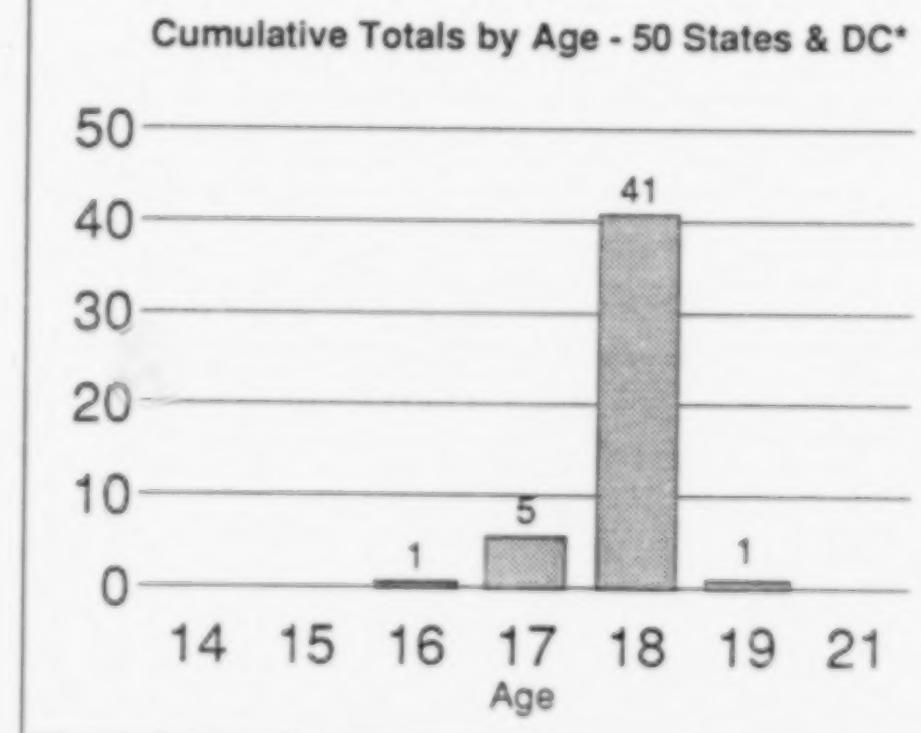
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<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
RI	16	R.I. Gen. Laws § 31-10-3 (Supp. 1987)
SC	18	S.C. Code Ann. § 56-1-100 (1976)
SD	18	S.D. Codified Laws Ann. § 32-12-6 (1984)
TN	18	Tenn. Code Ann. § 55-7-104(c)(1) (Supp. 1987)
TX	17	Tex. Rev. Civ. Stat. Ann. art. 6687(b)(4) (Supp. 1988)
UT	18	Utah Code Ann. § 41-2-115(1) (Supp. 1987)
VT	18	Vt. Stat. Ann. tit. 23, § 607 (Repl. 1987)
VA	18	Va. Code Ann. § 46.1-357 (Supp. 1988)
WA	18	Wash. Rev. Code Ann. § 46.20.100 (1987)
WV	18	W.Va. Code § 17B-2-3 (Repl. 1986)
WI	18	Wis. Stat. Ann. § 343.15 (Supp. 1987)
WY	18	Wyo. Stat. § 31-7-112 (Supp. 1988)

Totals (50 States and D.C.)

<u>Age</u>	<u>16</u>	<u>17</u>	<u>18</u>
<u>Number</u>	<u>13</u>	<u>4</u>	<u>34</u>

(g1)

APPENDIX G**Right to Purchase
Pornographic Materials**

*One state (AK) has no legislation, one state (OK) outlaws obscenity by statute, and one state (WY) does not specify a minimum age.

(g2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	18	Ala. Code § 13A-12-170(1) (Supp. 1987)
AK	—	No Legislation
AZ	18	Ariz. Rev. Stat. Ann. § 13-3506 (Supp. 1987)
AR	17	Ark. Stat. Ann. §§ 5-68-502, 5-68-501(1) (1987)
CA	18	Cal. Penal Code § 313.1 (Supp. 1988)
CO	18	Colo. Rev. Stat. §§ 18-7-501 to 18-7-502 (Repl. 1986)
CT	18	Conn. Gen. Stat. § 53a-196 (1985)
DL	18	Del. Code Ann. tit. 11, § 1361(b) (Repl. 1987)
DC	17	D.C. Code Ann. § 22-2001(b) (1981)
FL	18	Fla. Stat. Ann. § 847.012 (West Supp. 1987)
GA	18	OCGA § 16-12-103 (1984)
HA	18	Haw. Rev. Stat. § 712-1215 (Repl. 1985)
ID	18	Idaho Code § 18-1513 (1987)
IL	18	Ill. Ann. Stat. ch. 38, para. 11-21 (Smith-Hurd 1979)
IN	18	Ind. Code Ann. § 35-30-11.1-1 (Burns 1979)
IW	18	Iowa Code Ann. § 728.2 (West 1979)
KS	18	Kan. Stat. Ann. § 21-4301a (Supp. 1987)
KY	18	Ky. Rev. Stat. Ann. § 531-030 (Michie- Bobbs-Merrill 1985)
LA	17	La. Rev. Stat. Ann. § 14:91.11 (West 1986)

(g3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
ME	18	Me. Rev. Stat. Ann. tit. 17, § 2911 (1983 & Supp. 1987)
MD	18	Md. Ann. Code art. 27, § 419 (Supp. 1987)
MA	18	Mass. Gen. Laws Ann. ch. 272, § 28 (Supp. 1988)
MI	18	Mich. Comp. Laws Ann. § 750.142 (Supp. 1988)
MN	18	Minn. Stat. Ann. § 617.293 (1987)
MS	18	Miss. Code Ann. § 97-5-27 (Supp. 1987)
MO	18	Mo. Ann. Stat. § 753.040 (Vernon 1979)
MT	18	Mont. Code Ann. § 45-8-201 (1987)
NE	19	Neb. Rev. Stat. § 28-808 (1985)
NV	18	Nev. Rev. Stat. Ann. § 201.265 (1986)
NH	18	N.H. Rev. Stat. Ann. § 571-B:2 (Repl. 1986)
NJ	18	N.J. Stat. Ann. §§ 2C:34-2(b) (Supp. 1988), 2C:34-3(b) (1982)
NM	18	N.M. Stat. Ann. §§ 30-37-1 to 30-37-2 (1984)
NY	18	N.Y. Penal Law § 235.21 (McKinney 1980)
NC	18	N.C. Gen. Stat. § 19-13 (1983)
ND	18	N.D. Cent. Code § 12.1-27.1-03 (Repl. 1985)
OH	18	Ohio Rev. Code Ann. § 2907.31 (Baldwin 1986)
OK	—	Okla. Stat. Ann. tit. 21, § 1040.8 (West Supp. 1988) (obscenity illegal)
OR	18	Or. Rev. Stat. §§ 167.060, <i>et. seq.</i> (1987)

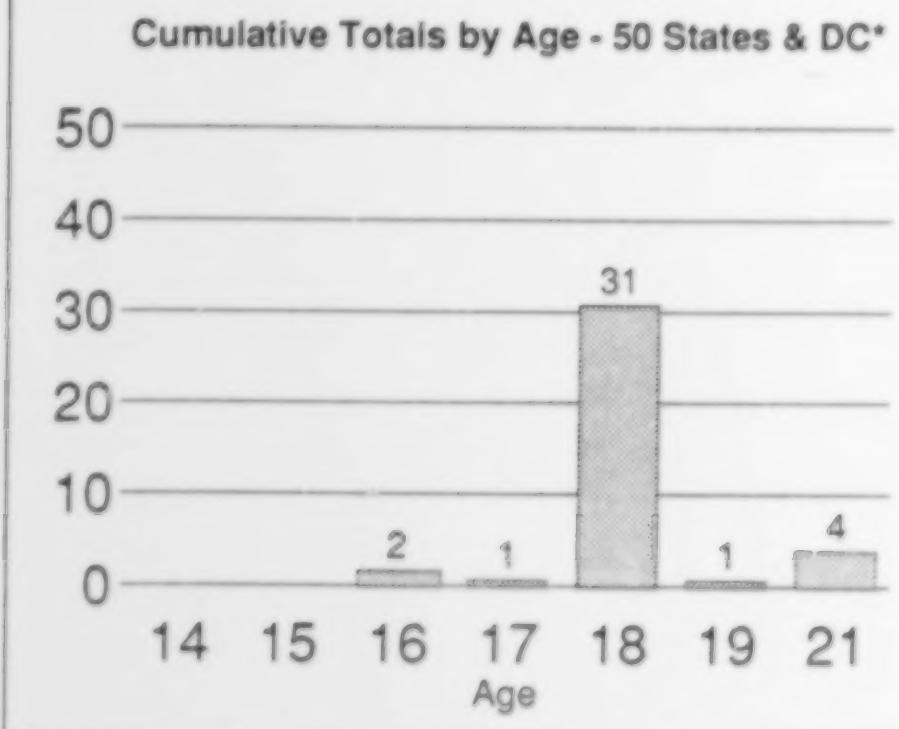
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<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
PA	17	Pa. Stat. Ann. tit. 18, § 5903 (Purdon 1983)
RI	18	R.I. Gen. Laws § 11-31-10 (Supp. 1987)
SC	16	S.C. Code Ann. § 16-15-385 (Supp. 1987)
SD	18	S.D. Codified Laws Ann. § 22-24-28 (1988)
TN	18	Tenn. Code Ann. § 39-6-1132 (Repl. 1982)
TX	17	Tex. Penal Code Ann. § 43.24 (Vernon 1974)
UT	18	Utah Code Ann. § 76-10-1206(1) (Repl. 1978)
VT	18	Vt. Stat. Ann. tit. 13, §§ 2801 to 2802 (Repl. 1974)
VA	18	Va. Code Ann. § 18.2-391 (Repl. 1988)
WA	18	Wash. Rev. Code Ann. §§ 9.68.050(1) to 9.68.060 (Supp. 1988)
WV	18	W. Va. Code §§ 61-8A-1(6) to 61-8A-2 (Repl. 1984)
WI	18	Wis. Stat. Ann. § 944.21(2) (1982)
WY	—	Wyo. Stat. § 6-4-302 (1983) and § 8-1-102 (1986) (no age specified)

Totals (50 States and D.C.)

<u>Age</u>	<u>16</u>	<u>17</u>	<u>18</u>	<u>19</u>	<u>Obscenity</u>	<u>No</u>	<u>No Age</u>
<u>Number</u>	1	5	41	1	1	1	1

(h1)

APPENDIX H**Right to Participate in Legalized Gambling**

*Twelve states (AL, AR, ID, IN, KY, MN, NM, NC, SC, SD, VT and VA) do not permit gambling.

(h2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	—	Gambling Not Permitted by Statute
AK	18	Alaska Stat. § 43.35.040(a)(1) (1983)
AZ	18	Ariz. Rev. Stat. Ann. § 5-112 (1983)
AR	—	Gambling Not Permitted by Statute
CA	18	Cal. Penal Code § 326.5(c) (West Supp. 1988)
CO	18	Colo. Rev. Stat. § 24-35-214(1)(c) (Repl. 1982)
CT	18	Conn. Gen. Stat. § 7-186a (Supp. 1988)
DL	18	Del. Code Ann. tit. 29, § 4810 (Repl. 1983)
DC	18	D.C. Code Ann. § 2-2534 (Supp. 1987)
FL	21	Fla. Stat. Ann. § 849.093(9)(a) (Supp. 1988)
GA	18	OCGA § 16-12-58 (1984)
HI	18	Haw. Rev. Stat. § 712-1231 (Repl. 1985)
ID	—	Gambling Not Permitted by Statute
IL	18	Ill. Ann. Stat. ch. 120, para. 1102(a) (Smith-Hurd Supp. 1986)
IN	—	Gambling Not Permitted by Statute
IA	18	Iowa Code Ann. § 233.1(C) (Supp. 1988)
KS	18	Kan. Stat. Ann. § 79-4706(m) (1984)
KY	—	Gambling Not Permitted by Statute
LA	17	La. Rev. Stat. Ann. § 14:92(A)(4) (West 1986)
ME	16	Me. Rev. Stat. Ann. tit. 17, § 319 (1983)
MD	18	Md. Ann. Code art. 9, § 124 (1984)

(h3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MA	18	Mass. Gen. Laws Ann. ch. 128A, § 10 (1981)
MI	18	Mich. Comp. Laws Ann. § 432.110(a) (Supp. 1988)
MN	—	Gambling Not Permitted by Statute
MS	21	Miss. Code Ann. § 97-33-21 (1972)
MO	18	Mo. Ann. Stat. § 313.280 (Supp. 1988)
MT	18	Mont. Code Ann. § 23-5-506 (1987)
NE	18	Neb. Rev. Stat. § 9-250 (1987)
NV	21	Nev. Rev. Stat. § 463.350 (1986)
NH	18	N.H. Rev. Stat. Ann. 287-E:7(III) (bingo); <i>id.</i> at § 287-E:21(v) (lottery); <i>but see id.</i> at § 287-A:4 (raffle tickets) (age 16) (Supp. 1987)
NJ	18	N.J. Stat. Ann. § 9:17B-1 (Supp. 1988)
NM	—	Gambling Not Permitted by Statute
NY	18	N.Y. Tax Law § 1610 (1987)
NC	—	Gambling Not Permitted by Statute
ND	21	N.D. Cent. Code § 53-06.1-07.1 (Supp. 1987)
OH	18	Ohio Rev. Code Ann. § 3770.07 (Supp. 1987)
OK	18	Okl. Stat. Ann. tit. 21, § 995.13 (West 1983) (permitted with parental consent)
OR	18	Or. Rev. Stat. § 163.575(1)(C) (1985)
PA	18	Pa. Stat. Ann. tit. 10, § 305 (Purdon Supp. 1988) (permitted with parental consent)

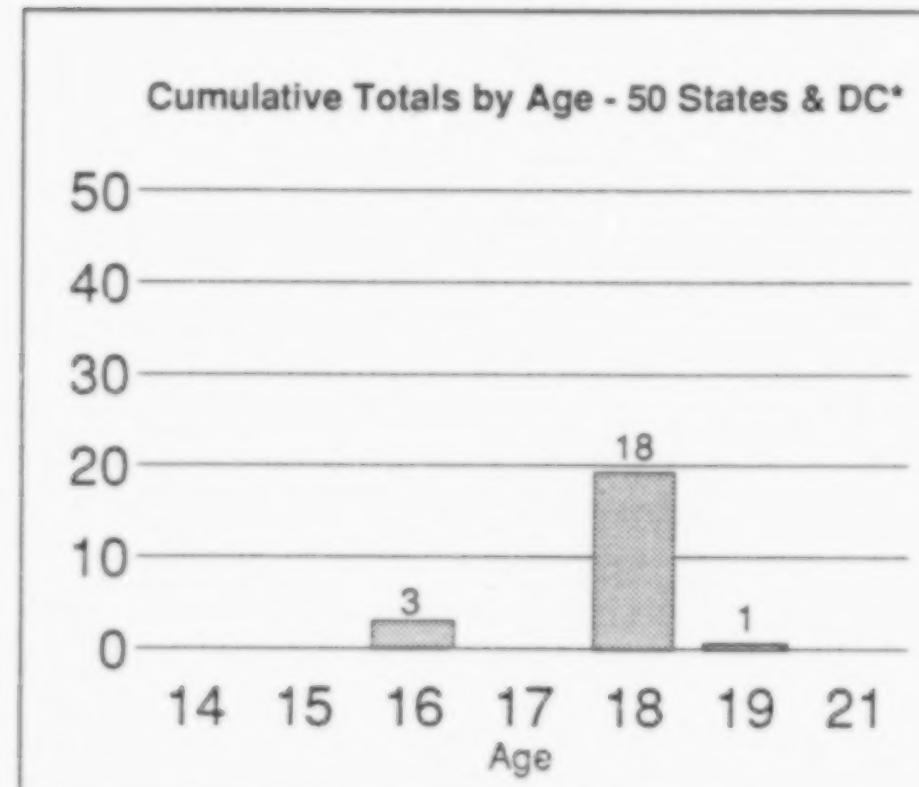
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<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
RI	18	R.I. Gen. Law § 11-19-32 (Supp. 1987)
SC	—	Gambling Not Permitted by Statute
SD	—	Gambling Not Permitted by Statute
TN	16	Tenn. Code Ann. § 39-6-609(f) (Supp. 1987)
TX	18	Tex. Rev. Civ. Stat. Ann. art. 179d, § 17 (Vernon Supp. 1988) (permitted with parental consent)
UT	—	Gambling Not Permitted by Statute
VT	18	Vt. Stat. Ann. tit. 31, § 674(J) (Repl. 1986)
VA	—	Gambling Not Permitted by Statute
WA	18	Wash. Rev. Code Ann. § 67.70.120 (Supp. 1988)
WV	18	W. Va. Code § 19-23-9(e) (Supp. 1988)
WI	18	Wis. Stat. Ann. § 163.51(13) (1974)
WY	19	Wyo. Stat. § 11-25-109(C) (Supp. 1988)

Totals (50 States and D.C.)

	<u>Age</u>	<u>16</u>	<u>17</u>	<u>18</u>	<u>19</u>	<u>21</u>	<u>Gambling banned</u>
<u>Number</u>	2	1	31	1	4	12	

(i1)

APPENDIX I**Right to Patronize Pool Halls**

*Twenty-nine states (AK, AZ, CA, CO, DL, DC, ID, IA, IL, IN, KS, MD, MI, MN, MT, NE, NV, NH, NJ, NM, ND, OH, OR, SD, TX, UT, VT, WV and WI have no relevant legislation.

(i2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	19	Ala. Code § 34-6-9 (Repl. 1985)
AK	—	No Legislation
AZ	—	No Legislation
AR	18	Ark. Stat. Ann. § 5-27-224(a) (1987)
CA	—	No Legislation
CO	—	No Legislation
CT	18	Conn. Gen. Stat. § 53-281 (1985)
DE	—	No Legislation
DC	—	No Legislation
FL	18	Fla. Stat. Ann. § 849.04 (West 1976) (minors may not play where betting allowed)
GA	18	OCGA § 43-8-10 (1984) (minors may not enter if alcohol sold unless accompanied by parent)
HI	18	Haw. Rev. Stat. § 445-54 (1985)
ID	—	No Legislation
IL	—	No Legislation
IN	—	No Legislation
IA	—	No Legislation
KS	—	No Legislation
KY	18	Ky. Rev. Stat. Ann. § 436.320 (Michie/Bobbs-Merrill 1985)
LA	18	La. Rev. Stat. Ann. § 26:88 (West Supp. 1986)
ME	16	Me. Rev. Stat. Ann. tit. 26, § 773 (1974)
MD	—	No Legislation

(i3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MA	18	Mass. Gen Laws. Ann. ch. 140, § 179 (West 1974)
MI	—	No Legislation
MN	—	No Legislation
MS	18	Miss. Code Ann. § 97-5-11 (Supp. 1987)
MO	16	Mo. Ann. Stat. § 318.090 (Supp. 1988)
MT	—	No Legislation
NE	—	No Legislation
NV	—	No Legislation
NH	—	No Legislation
NJ	—	No Legislation
NM	—	No Legislation
NY	16	N.Y. Gen. Bus. Law § 465 (McKinney 1984)
NC	18	N.C. Gen. Stat. § 14-317 (1986) (minors may not enter premises where alcohol sold)
ND	—	No Legislation
OH	—	No Legislation
OK	18	Okl. Stat. Ann. tit. 21, § 1103 (West Supp. 1983)
OR	—	No Legislation
PA	18	Pa. Stat. Ann. tit. 18, § 7105 (Purdon 1983)
RI	18	R.I. Gen. Laws § 5-2-13 (1976)
SC	18	S.C. Code Ann. § 20-7-350 (1985)
SD	—	No Legislation

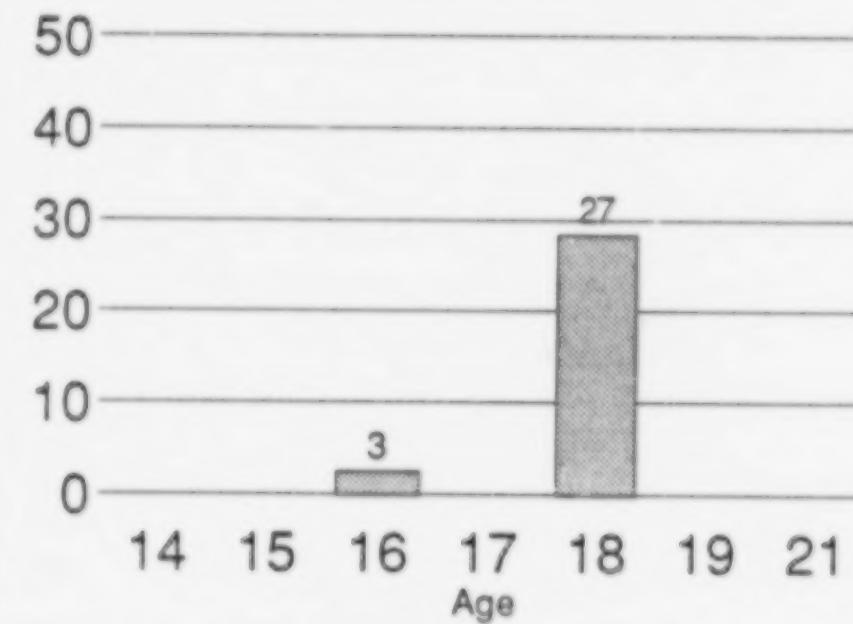
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(j1).

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
TN	18	Tenn. Code Ann. § 39-4-419 (Supp. 1987)
TX	—	No Legislation
UT	—	No Legislation
VT	—	No Legislation
VA	18	Va. Code Ann. § 40.1-100 (1986)
WA	18	Wash. Rev. Code Ann. § 26.28.080(2) (Supp. 1988)
WV	—	No Legislation
WI	—	No Legislation
WY	18	Wyo. Stat. § 33-6-108(b) (1987)

Totals (50 States and D.C.)

<u>Age</u>	<u>16</u>	<u>18</u>	<u>19</u>	<u>No Legislation</u>
<u>Number</u>	3	18	1	29

APPENDIX J**Right to Pawn Property or to Sell to Junk or Precious Metal Dealers****Cumulative Totals by Age - 50 States & DC***

*Twenty states (AL, AK, AR, DC, FL, GA, ID, IA, MA, ME, MS, NE, NY, NC, SC, SD, UT, VA, WV, and WY have no relevant legislation.

(j2)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
AL	—	No Relevant Legislation
AK	--	No Relevant Legislation
AZ	16	Ariz. Rev. Stat. Ann. § 44-1627 (Supp. 1986)
AR	—	No Relevant Legislation
CA	16	Cal. Fin. Code § 21207 (West 1981)
CO	18	Colo. Rev. Stat. § 12-56-104 (1985)
CT	18	Conn. Gen. Stat. § 21-47 (1985)
DL	18	Del. Code Ann. tit. 24, § 2312 (1981)
DC	—	No Relevant Legislation
FL	—	No Relevant Legislation
GA	—	No Relevant Legislation
HI	18	Haw. Rev. Stat. § 445-133 (1985)
ID	—	No Relevant Legislation
IL	18	Ill. Ann. Stat. ch. 23, para. 2366 (Smith-Hurd 1968)
IN	18	Ind. Code Ann. § 28-7-5-36 (Burns 1973)
IA	—	No Relevant Legislation
KS	18	Kan. Stat. Ann. § 18-717 (1981)
KY	18	Ky. Rev. Stat. Ann. § 226.030 (Michie/Bobbs-Merrill 1982)
LA	18	La. Rev. Stat. Ann. § 37:1764 (West Supp. 1987)
ME	18	No Relevant Legislation
MD	18	Md. Ann. Code art. 56, § 424 (1983)

(j3)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
MA	—	No Relevant Legislation
MI	18	Mich. Comp. Laws Ann. § 750.137 (West Supp. 1986)
MN	18	Minn. Stat. Ann. § 609.81 (West Supp. 1987)
MS	—	No Relevant Legislation
MO	18	Mo. Ann. Stat. § 568.070 (Vernon 1979)
MT	18	Mont. Code Ann. § 45-5-623 (1987)
NE	—	No Relevant Legislation
NV	18	Nev. Rev. Stat. § 647.140 (1985)
NH	18	N.H. Rev. Stat. Ann. § 398:2 (1983)
NJ	16	N.J. Stat. Ann. § 45:22-31 (West 1978)
NM	18	N.M. Stat. Ann. § 56-12-14 (1986)
NY	—	No Relevant Legislation
NC	—	No Relevant Legislation
ND	—	No Relevant Legislation
OH	18	Ohio Rev. Code Ann. § 4727.10 (Supp. 1987)
OK	18	Okl. Stat. Ann. tit. 59, § 1511 (West Supp. 1987)
OR	18	Or. Rev. Stat. § 726.270 (1985)
PA	18	Pa. Stat. Ann. tit. 63, § 281-29 (Purdon Supp. 1987)
RI	18	R.I. Gen. Laws § 19-26-12 (1982)
SC	—	No Relevant Legislation
SD	—	No Relevant Legislation

(j4)

(k1)

<u>STATE</u>	<u>AGE</u>	<u>CITATION</u>
TN	18	Tenn. Code Ann. § 45-6-110 (Repl. 1987)
TX	18	Tex. Rev. Civ. Stat. Ann. art. 5069-51.16 (Supp. 1988)
UT	—	No Relevant Legislation
VT	18	Vt. Stat. Ann. tit. 9, § 3870 (Repl. 1984)
VA	—	No Relevant Legislation
WA	18	Wash. Rev. Code Ann. § 19.60.066(3) (Supp. 1988)
WV	—	No Relevant Legislation
WI	18	Wis. Stat. Ann. § 943.35(2) (1982)
WY	—	No Relevant Legislation

Totals (50 States and D.C.)

<u>Age</u>	<u>16</u>	<u>18</u>	<u>No Legislation</u>
<u>Number</u>	<u>3</u>	<u>27</u>	<u>21</u>

APPENDIX K
STATE OF MARYLAND
Office of the Governor

[seal]

WILLIAM DONALD SCHAEFER In Reply Refer To:
GO-02 Governor

April 7, 1987

Honorable R. Clayton Mitchell, Speaker
Maryland House of Delegates
Room 101, State House
Annapolis, MD 21401

Dear Speaker Mitchell:

The matter of exempting minors from the death penalty will come before you in the form of Senate Bill 598. When it does, I hope you will treat it favorably.

The measure bears impressive credentials. It is the first bill of its kind to pass the Senate. I was struck by the fact that the decisive Senate votes came not from newly-elected members of that Chamber, but from Senate veterans who had opposed an exemption for minors in previous years.

The bill also has the support of the principal spokespeople of all of the State's major religious faiths. This impressive coming together of our State's religious leadership may be unprecedented.

I believe it is for the good of the children of our State to establish a minimum age for the imposition of the death penalty, indeed, as have most other states and most other nations. Maryland law itself currently recognizes that age can be considered a mitigating factor at the sentencing phase of a capital trial.

(k2)

I must, however, express my concern with the Amendments placed on the bill by the Judiciary Committee. These Amendments would change the application of the death penalty exemption from under 18 to under 16. Eighteen years of age is recognized by international agreements to which the United States is signatory as the appropriate age for which the death penalty for capital crimes should be considered. Indeed, nine other states in our country set a minimum of 18 for the imposition of the death penalty. This is a significantly larger number of states than those which recognize any other minimum age cutoff.

As a State, we also distinguish the actions of children from the actions of adults. In the area of contracts, motor vehicles and voting, we recognize that juveniles are not fully responsible for their actions. Society as a whole shares responsibility for the actions of its children.

I have not come to this position quickly or lightly. Families and friends of murder victims have intense and legitimate needs, most often overlooked by the criminal justice process. Although we have made tremendous efforts as a State to help victims to no longer be dominated by their tragic loss, much more needs to be done. However, I do not believe that the execution of convicted juveniles can contribute to us fulfilling our obligation to crime's victims.

It is my sincere hope that you will work to return Senate Bill 598 to the same posture as it was first read in the House of Delegates and act favorably on our legislation.

Thank you very much for allowing me to express my views to you on this important issue. I know that this issue is an important personal decision for all of us to make.

Sincerely,

/s/ Don Schaefer
Governor

cc: Members of the
House of Delegates

(l1)

APPENDIX L
**PERTINENT STATE STATUTES RESPECTING STATUS OF
YOUTH IN DEATH PENALTY STATES**

Age at Offense	Minimum Age of Offender Required by Capital Punishment Jurisdictions	Total Jurisdiction
18:	12	California (Cal. Penal Code § 190.5 (1988))
		Colorado (Col. Rev. Stat. § 16-11-103(1)(a) (Repl. 1986))
		Connecticut (Conn. Gen. Stat. Ann. § 53a-46a(g)(1) (1985))
		Illinois (38 Ill. Ann. Stat. § 9-1(b) (Supp. 1988))
		Maryland (27 Md. Code § 412(F) (1988))
		Nebraska (Nebr. Rev. Stat. § 28-105.01 (1985))
		New Hampshire (N.H. Rev. Stat. Ann. § 630:5(XIII) (Supp. 1987)) (prohibiting execution of one who was a minor at the time of the offense); <i>id.</i> at § 21-B:1 (age of majority in New Hampshire is age 19); <i>but see id.</i> at § 630:1(v) (prohibits holding anyone under age 17 to be culpable of a capital offense)
		New Jersey (N.J. Stat. Ann §§ 2A:4A-22(a) (1987) & 2C:11-3g (West Supp. 1988))
		New Mexico (N.M. Stat. Ann. § 31-18-14(A) (Repl. 1987))
		Ohio (Ohio Rev. Code Ann. § 2929.02(A) (1987))
		Oregon (Ore. Rev. Stat. §§ 161.620 & 419.476(1) (Supp. 1987))

(12)

**Age at
Offense Total Jurisdiction**

		Tennessee (Tenn. Code Ann. §§ 37-1-102(3), (4) (Supp. 1987); 37-1-103 (Repl. 1984); 37-1-134(a)(1) (Repl. 1984))
17:	3	Georgia (OCGA § 17-9-3 (Supp. 1988); <i>see also Bankston v. State</i> , 367 S.E.2d 36 (Ga. 1988))
		North Carolina (N.C. Gen. Stat. § 14-17 (Supp. 1987))
		Texas (Tex. Penal Code Ann. § 8.07(d) (Supp. 1988))
16:	3	Indiana (Ind. Rev. Code § 35-50-2-3(b) (Supp. 1988))
		Kentucky (Ky. Rev. Stat. Ann. § 640.040(1) (1987))
		Nevada (Nev. Rev. Stat. § 176.025 (1986))

**Statutes Specifically Listing Age of Offender
As Mitigating Factor**

(28 States)

ALABAMA: Ala. Code § 13A-5-51(7) (1982)
ARIZONA: Ariz. Rev. Stat. Ann. § 13-703G.5 (Supp. 1987)
ARKANSAS: 5 Ark. Code Ann. § 5-4-605(4) (1987)
CALIFORNIA: Cal. Penal Code § 190.05(h)(9) (1988)
COLORADO: Colo. Rev. Stat. § 16-11-103(5)(a) (1986)
CONNECTICUT: Conn. Gen. Stat. Ann. § 53a-46a(g)(1) (Supp. 1988)
FLORIDA: Fla. Stat. Ann. § 921.141(6)(g) (1985)
INDIANA: Ind. Code Ann. § 35-50-2-9(e)(7) (Supp. 1988)
KENTUCKY: Ky. Rev. Stat. § 532.025(2)(b)(8) (1985)

(13)

LOUISIANA: La. Code Crim. Proc. Ann. art. 905.5(f) (1984)
 MARYLAND: Md. Code art. 27, § 413(g)(5) (1988)
 MISSISSIPPI: Miss. Code Ann. § 99-19-101(6)(g) (Supp. 1987)
 MISSOURI: Mo. Rev. Stat. § 565.032(3)(7) (1987)
 MONTANA: Mont. Code Ann. § 46-18-304(7) (1987)
 NEBRASKA: Nebr. Rev. Stat. § 29-2523(2)(d) (1985)
 NEVADA: Nev. Rev. Stat. § 200.035(6) (1986)
 NEW HAMPSHIRE: N.H. Rev. Stat. Ann. § 630.5(II)(b)(5) (1986)
 NEW JERSEY: N.J. Stat. Ann. § 2C:11-3(c)(5)(e) (Supp. 1988)
 NEW MEXICO: N.M. Stat. Ann. § 31-20A-6(I) (1987)
 NORTH CAROLINA: N.C. Gen. Stat. § 15A-2000(f)(7) (1983)
 OHIO: 29 Ohio Rev. Code Ann. §§ 2929.04 (B)(4), 2929.023, (1987)
 PENNSYLVANIA: Pa. Cons. Stat. Ann. art. 42, § 9711(e)(4) (1982)
 SOUTH CAROLINA: S.C. Code Ann. 16-3-20(c)(b)(7) & (9) (Supp. 1987)
 TENNESSEE: Code Ann. § 39-2-203(j)(7) (1982)
 UTAH: Utah Code Ann. § 76-3-207(2)(e) (Supp. 1988)
 VIRGINIA: Va. Code § 19.2-264.4(B)(v) (1983)
 WASHINGTON: Wash. Rev. Code § 10.95.070(7) (Supp. 1988)
 WYOMING: Wyo. Stat. § 6-2-102(j)(vii) (1988)

(m1)

APPENDIX M

JUVENILE AND TOTAL EXECUTIONS IN THE
UNITED STATES, BY DECADE, JANUARY 1, 1900
THROUGH JUNE 30, 1988

<u>Decade</u>	<u>Total Executions</u>	<u>Juvenile Executions</u>	<u>Percentage</u>
1900-09	1,192	23	1.9%
1910-19	1,039	24	2.3%
1920-29	1,169	27	2.3%
1930-39	1,670	41	2.5%
1940-49	1,288	53	4.1%
1950-59	716	16	2.2%
1960-69	191	3	1.6%
1970-79	3	0	0%
1980-88	97	3	3.1%
Totals:	7,365	190	2.6%

Sources of data: W. Bowers, *Legal Homicide* 54 (1984); V. Streib, *Death Penalty for Juveniles* 191-208 (1987); NAACP Legal Defense and Educational Fund, Inc., Death Row, U.S.A. 1 (May 1, 1988).

(n1)

APPENDIX N
DEATH SENTENCES FOR JUVENILE OFFENDERS,
JANUARY 1, 1982 THROUGH JUNE 30, 1988

Year	Offender's Name	Age at Crime	State	Current Status
1982 (11)	Barrow, Lee	17	TX	reversed in 1985
	Cannon, Joseph	17	TX	now on death row
	Carter, Robert	17	TX	now on death row
	Garrett, Johnny	17	TX	now on death row
	Johnson, Lawrence	17	MD	reversed twice but resentenced to death in 1983 and 1984
	Lashley, Frederick	17	MO	now on death row
	Legare, Andrew	17	GA	reversed in 1983; resentenced to death in 1984; reversed in 1986
	Stanford, Kevin	17	KY	now on death row
	Stokes, Freddie	17	NC	reversed in 1982; resentenced to death in 1983; reversed in 1987
	Thompson, Jay	17	IN	reversed in 1986
1983 (9)	Trimble, James	17	MD	now on death row
	Bey, Marko	17	NJ	now on death row
	Cannady, Attina	16	MS	reversed in 1984
	Harris, Curtis	17	TX	now on death row
	Harvey, Frederick	16	NV	reversed in 1984
	Hughes, Kevin	16	PA	now on death row
	Johnson, Lawrence	17	MD	reversed in 1983, but resentenced to death in 1984
	Lynn, Frederick	16	AL	reversed in 1985 but resentenced to death in 1986
	Mhoon, James	16	MS	reversed in 1985
	Stokes, Freddie	17	NC	reversed in 1987
1984(6)	Aulisio, Joseph	15	PA	reversed in 1987

(n2)

Year	Offender's Name	Age at Crime	State	Current Status
1985(5)	Brown, Leon	15	NC	reversed in 1988
	Johnson, Lawrence	17	MD	now on death row
	Legare, Andrew	17	GA	reversed in 1986
	Patton, Keith	17	IN	reversed in 1987
	Thompson, W. Wayne	15	OK	reversed in 1988
	Livingston, Jesse	17	FL	reversed in 1988
	Morgan, James	16	FL	now on death row
	Ward, Ronald	15	AR	reversed in 1987
	Williams, Raymond	17	PA	reversed in 1987
	Wills, Bobby	17	TX	now on death row
1986(7)	Comeaux, Adam	17	LA	reversed in 1987
	Cooper, Paula	15	IN	now on death row
	LeCroy, Cleo	17	FL	now on death row
	Lynn, Fredrick	16	AL	now on death row
	Sellers, Sean	16	OK	now on death row
	Wilkins, Heath	16	MO	now on death row
	Williams, Alexander	17	GA	now on death row
1987(2)	Dugar, Troy	15	LA	now on death row
	Lamb, Wilbur	17	FL	now on death row
1988*(1)	Hegwood, Bernell	17	FL	now on death row

Source of Data: Victor Streib, Professor of Law, Cleveland State University School of Law.

(o1)

APPENDIX O
THIRTY-EIGHT PERSONS ON DEATH ROW AS OF
DECEMBER 31, 1983, FOR CRIMES COMMITTED WHILE
UNDER AGE EIGHTEEN

State	Prisoner	Age at Time of Offense
Alabama	Davis, Timothy	17
	Jackson, Carnel	16
	Lynn, Frederick	17
Florida	Magill, Paul	17
	Morgan, James	16
	Peavy, Robert	17
Georgia	Bruger, Christopher	17
	Buttrum, Janice	17
	High, Jose	17
	Legare, Andrew	17
Indiana	Thompson, Jay	17
Kentucky	Ice, Todd	15
	Stanford, Kevin	17
Louisiana	Prejean, Dalton	17
Maryland	Johnson, Lawrence	17
	Trimble, James	17
Mississippi	Cannaday, Attina	16
	Jones, Larry	17
	Mhoon, James	16
	Tokman, George	17
Missouri	Lashley, Frederick	17
Nevada	Harvey, Frederick	16

* Current as of June 30, 1988.

(o2)

State	Prisoner	Age at Time of Offense
New Jersey	Bey, Marko	17
N. Carolina	Oliver, John	14
	Stokes, Freddie	17
Oklahoma	Eddings, Monty	16
Pennsylvania	Hughes, Kevin	16
S. Carolina	Roach, James	17
Texas	Barrow, Lee	17
	Battie, Billy	17
	Burns, Victor	17
	Cannon, Joseph	17
	Carter, Robert	17
	Garrett, Johnny	17
	Graham, Gary	17
	Harris, Curtis	17
	Pinkerton, Jay	17
	Rumbaugh, Charles	17

* Sources of data: NAACP Legal Defense and Educational Fund, Inc., Death Row, U.S.A. (Dec. 20, 1983); Brief for Petitioner at 19a app. E, *Eddings v. Oklahoma*, 455 U.S. 104 (1982); V. Streib, *Death Penalty for Juveniles* 31 (1987).

(p1)

APPENDIX P
TWENTY-EIGHT PERSONS ON DEATH ROW AS OF JUNE
1988, FOR CRIMES COMMITTED WHILE UNDER AGE
EIGHTEEN

State	Prisoner	Age at Time of Offense
Alabama	Davis, Timothy	17
	Lynn, Frederick	16
Florida	LeCroy, Cleo	17
	Hegwood, Bernell	17
	Livingston, Jesse	17
	Lamb, Wilburn	17
	Morgan, James	16
Georgia	Burger, Christopher	17
	Buttrum, Janice	17
	High, Jose	17
	Williams, Alexander	17
Indiana	Cooper, Paula	15
Kentucky	Stanford, Kevin	17
Louisiana	Dugar, Troy	15
	Prejean, Dalton	17
Maryland	Johnson, Lawrence	17
	Trimble, James	17
Mississippi	Jones, Larry	17
Missouri	Lashley, Frederick	16
	Wilkins, Heath	16
Oklahoma	Sellers, Sean	16

(p2)

State	Prisoner	Age at Time of Offense
Pennsylvania	Hughes, Kevin	16
Texas	Cannon, Joseph	17
	Carter, Robert	17
	Harris, Curtis	17
	Garrett, Johnny	17
	Wills, Bobby	17
	Graham, Gary	17

* Sources of data: NAACP Legal Defense and Educational Fund, Inc., Death Row, U.S.A. (May 1, 1988); Letter from Tanya Coke, NAACP Legal Defense and Educational Fund to Michael Mello (Aug. 18, 1988); Streib, Persons on Death Row as of June 24, 1988, for Crimes Committed While Under Age Eighteen (June 24, 1988) (unpublished report prepared by Professor Victor Streib, Cleveland State Univ. School of Law).

(q1)

APPENDIX Q
ARRESTS FOR WILLFUL CRIMINAL HOMICIDE, BY AGE GROUPS, JANUARY 1, 1982, THROUGH JUNE 30, 1988

Year	Arrests for All Ages	Arrests for Age 17 & Younger	% of Arrests for All Ages
1982	18,511	1,579	8.5%
1983	18,064	1,345	7.4%
1984	13,676	1,004	7.3%
1985	15,777	1,311	8.3%
1986	16,066	1,396	8.7%
1987	15,903	1,526	9.6%
1988*	(8,000)**	(750)**	(9.4)**
Totals:	105,997	8,911	8.4%

* data current as of June 30, 1988

** estimated because exact data unavailable

Sources of Data: *Thompson v. Oklahoma*, 108 S. Ct. 2687, 2697 (1988) (plurality); United States Department of Justice, Uniform Crime Reports: Crime in the United States 174 (1987); *id.* at 174 (1986); *id.* at 174 (1985); *id.* at 172 (1984); *id.* at 179 (1983); *id.* at 176 (1982); and Appendices B, C, D, and E.

APPENDIX R

**DEATH SENTENCES FOR WILLFUL CRIMINAL
HOMICIDE, BY AGE GROUPS, JANUARY 1, 1982,
THROUGH JUNE 30, 1988**

<u>Year</u>	<u>Death Sentences For All Ages</u>	<u>Death Sentences For Age 17 & Younger</u>	<u>% of Death Sentences For All Ages</u>
1982	284	11	3.9%
1983	259	9	3.5%
1984	280	6	2.1%
1985	273	5	1.8%
1986	297	7	2.4%
1987	(280)*	2	(0.7%)*
<u>1988**</u>	<u>(140)*</u>	<u>1</u>	<u>(0.7%)*</u>
Totals:	1,813	41	2.3%

*estimated because exact data unavailable

**data current as of June 30, 1988

Sources of Data: *Thompson v. Oklahoma*, 108 S. Ct. 2687, 2697 (1988) (plurality); United States Department of Justice, Capital Punishment 1985, at 6 (1987); *id.* at 6 (1984) and Appendices B, C, D, and E.

(s1)

APPENDIX S
MISSOURI DEATH SENTENCE CASES

Defendant	Age	Notes
Amrine, Joseph	28	
Antwine, Calvert	24	
Baker, Robert	30	
Bannister, Alan	24	
Battle, Thomas	18	
Bibb, Ray	23	Plead guilty
Blair, Walter	18	
Bolder, Martsay	21	
Boliek, Williams	27	
Byrd, Maurice	24	
Cavaness, John	59	
Chambers, James	30	Rev'd and retried
Clemons, Eric	23	
Driscoll, Robert	42	
Foster, Emmitt	31	
Gilmore, George	33	
Gilmore, George	34	Rev'd and retried
Griffin, Larry	25	
Griffin, Milton	25	Hung jury
Griffin, Richard	27	
Grubbs, Ricky	26	
Guinan, Frank	35	
Guinan, Frank	40	
Harvey, Walter	20	Rev'd
Johns, Stephen	36	
Jones, Marvin	62	
Jones, William	21	
Kenley, Kenneth	23	
Kilgore, Bruce	26	
LaRette, Anthony	28	
Lashley, Frederick	16	
Laws, Leonard	31	
Leisure, David	33	
Lingar, Stanley	21	
Mallett, Jerome	26	
Malone, Kelvin	21	
Mathenia, Chuck	25	

(s2)

Defendant	Age	Notes
McDonald, Samuel	32	
McIlvoy, Terry	24	
McMillan, Richard	24	
Mercer, George	34	
Murray, Robert	22	
Nave, Emmett	43	
Newlon, Rayfield	23	
O'Neal, Robert	22	
Parkus, Steven	25	
Pollard, Roosevelt	19	
Powell, Reginald	19	
Preston, Elroy	27	
Reese, Donald	44	
Roberts, Roy	36	
Rodden, James	23	
Sanders, Clendell	31	Hung jury
Schlup, Lloyd	23	
Schneider, Eric	23	
Schnick, James	36	
Shaw, Bobby	28	
Sidebottom, Robert	23	
Sloan, Jeffrey	19	
Smith, Gerald	21	
Smith, Gerald	27	
Stokes, Winfred	26	
Sweet, Glennon	32	
Trimble, Patrick	20	
Wacaser, Nila	39	
Walls, Robert	20	
Wells, Luther	38	
Wilkins, Heath	16	Plead guilty; asked for death
Williams, Doyle	33	
Young, Moses	27	
Zeitvogel, Richard	28	

(s3)

MISSOURI LIFE SENTENCE CASES

Defendant	Age	Death Waived By State	Notes
Alexander, John	33	X	
Allen, George	25	X	
Allen, Robert	16		
Allen, Shirley	38	X	
Armbruster, Randall	19	X	
Arnold, Robert	38		
Ayers, Carl	19	X	
Barr, Ronnie	25		
Bashe, Jay	31		Rev'd
Baskerville, Rickey	19		
Beck, Joseph	19		
Betts, James	28	X	
Petts, James	28	X	
Bible, Gary	42		
Borden, Roberta	35		
Bostic, Joe	35		
Bounds, Jack	47		Judge-tried
Boyd, Alfred	53	X	
Boyd, Stanley	21		
Brown, Mark	19	X	Judge-tried
Bryant, John	27	X	
Burke, William	60	X	
Burton, Darryl	22	X	
Canterbury, Terry	26		
Carr, Jason	16	X	
Carr, Rodney	21		
Carter, George	48	X	
Cason, Timothy	16	X	
Clark, Gene	39		
Clark, Raphael	21		
Clay, David	39	X	
Clements, Ronald	17		
Clemmons, Eric	20	X	
Clevenger, Roxie	65	X	
Coleman, Betty	24		
Cranmer, Roy	25	X	
Crespo, Jose	35	X	
Dayringer, Joseph	16	X	

Death penalty
waived at request of
victim's widow

Rev'd

(s4)

Defendant	Age	Death Waived	By State	Notes
Dennis, Roger	21	X		
Dickson, Christopher	21	X		
Downs, Jerome	23			
Dunn, Emmitt	25			
Edwards, David	17			
Eggers, William	53			
Emerson, Larry	30			
Engleman, Glennon	53			Hung jury
Epps, Edward	25	X		
Fields, Eugene	22	X		
Follins, Byron	20			
Ford, Michael	20	X		
Ford, Robert	34	X		Rev'd
Franco, Alfred	33	X		
Fuhr, Jerry	23			Rev'd
Gardner, Stephen	24			Rev'd
Garner, Leon	30	X		
Gebhardt, William	17	X		
Greathouse, Robin	17			
Griffin, Lamont	18	X		
Groves, David	19	X		
Hall, James	33	X		
Hall, Jesse	39	X		
Hankins, Ronnie	30	X		
Harper, Ronald	22			
Harvey, Walter	20			
Hemme, Sandra	20	X		
Hemphill, John	26	X		
Hemphill, Roman	25	X		
Henderson, Judy	32			
Holmes, Roderick	22	X		
Hudgins, Edward	27	X		
Hughes, Becca	34	X		
Hurt, Charles	19			
Ingram, Lorn	24	X		
Jackson, James	24			
Jensen, Mitchell	21			
Jimmerson, Danny	28	X		
Johnson, Cornelius	26			Rev'd, retried
Johnson, Ivory	36	X		
Jones, Craig	22			Hung jury
Jones, Verna	39			Hung jury
Kennedy, Joseph	52			
Kinnard, Andrew	46	X		Rev'd

(s5)

Defendant	Age	Death Waived	By State	Notes
LaNasa, Joseph	35			Hung jury
Lawrence, Edward	28			
Laws, Leonard	31			
Laws, Leonard	31			
Leisure, Anthony	33			
Lewis, Theodore	21	X		Judge-tried
Loggins, Lobester	21	X		
Lomax, Leslie	28			
Luckett, Willie	27			
Lute, Shirley	48	X		Rev'd, retried
Malady, John	24			
Martin, Helen	33	X		
Martin, Robert	34			
McConnell, James	46	X		
Merchant, Roger	37			
Merritt, Derrick	22			
Merritt, Gary	29			
Miller, Delores	54	X		
Miller, Verdia	36	X		
Mitchell, Ervin	51	X		
Mitchell, Johnnie	24			
Morris, Anthony	22	X		Hung jury
Murray, William	30			
Neal, Lonnie	20	X		Rev'd
Noel, James	42	X		
Owens, Antoine	20			
Patterson, Dale	18	X		Rev'd
Potter, James	18			Judge ruled agg. cir. insufficient and in- structed jury to sign form for life
Powell, Clifton	28			Hung jury
Powell, Hubert	56			
Prewitt, Patricia	34	X		
Price, Darryl	19	X		
Randolph, Ronald	20	X		Rev'd, retried
Reasonover, Ellen	24			Hung jury
Reynolds, Gary	33	X		
Rickey, Marvin	27	X		
Roberts, Gary	38			
Robinson, Glenn	23	X		
Roby, Steven	29	X		
Rodden, James	23			
Roland, Thereon	17			

(s6)

Defendant		Death Waived	
	Age	By State	Notes
Royal, Phillip	32		
Salkil, Daniel	29		
Sanders, George	25	X	
Sanders, Richard	28		Hung jury
Sargent, Vincent	23		
Scott, Jeffrey	16		
Scott, Keith	17	X	Rev'd
Scott, Kent	25	X	
Shaw, Michael	24	X	
Smith, Leroy	66	X	
Smith, Otis	46		
Spivey, Wallace	22	X	Rev'd
Stephens, James	32		
Steward, Donald	16	X	Rev'd
Stewart, Rodnie	25		
Stith, Michael	23	X	
Strickland, Kevin	19	X	
Stuckey, bobbie	32	X	
Sturgeon, William	37	X	
Tate, David	23		
Taylor, Jerry	29	X	Remanded for hearing
Thomas, Lawrence	29		
Turner, Willie	29		
Valentine, Glenn	32	X	
Ware, David	23		
Washington, James	27		
Weatherspoon, Barry	26		
Webster, Byron	30	X	
White, Donnell	17		Vacated
White, Michael	19	X	
White, Roy	40		
Williams, Doyle	33		
Williams, Ernest	28		Hung jury
Williams, James	31		
Williams, James E.	27		
Williams, Rondell	18	X	
Williams, Vicki	24		
Wilson, Alvin	18	X	
Wirth, William	54		
Woods, Burton	25		
Woods, Willard	34		
Woolsey, Ricky	29		

(s7)

Defendant		Death Waived	
	Age	By State	Notes
Yingst, Terry	28	X	Rev'd
Zeitvogel, Richard	24		

Source: Nancy McKerrow, Esq., Counsel for Petitioner in *Wilkins v. Missouri*, No. 87-6026.